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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 4, 2006

1:33 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SALLY M. McKEAG, Member
Public Employment Relations Board

KAREN L. NEUWALD, Member
Public Employment Relations Board

SENATOR DEBORAH ORTIZ

AARON READ
California Association of Highway Patrolmen

CHRISTY BOUMA
California Professional Firefighters

KAREN Y. ZAMARRIPA
California State University

DWIGHT STENBAKKEN
League of California Cities

STEVE KEIL
California State Association of Counties

CAITLIN VEGA
California Labor Federation

MICHELLE CASTRO
SEIU

DAVID BALLA-HAWKINS
California Faculty Association

STEPHEN E. JENSEN, Member
State Building Standards Commission

BOB RAYMER
California Building Industry Association

DENNIS MATHISEN, Fire Marshal
City of Roseville

MATT WHEELER
California Building Officials

KIM BLACKSETH, Disabled Access Consultant
Interests, Inc.

RICHARD SKAFF, Accessibility Design Consultant
Skaff & Associates

CONNIE ARNOLD
Disability Policy Consultant

VAN KYSOR, Director
Governmental Affairs
California Council of the Blind

JEAN RIKER
DLA Foundation/CDR

SUSAN CHANDLER BARNHILL, Treasurer
Californians for Disability Rights

LINDA ROBERTS
Upper Body Disabled

MARTY OMOTO, Disability Advocate
California Disability Community Action Network

JOSEPH ABBOTT, M.D.
Plumas County Advocates for Access Coalition

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Senate Rules Committee will convene. We have a quorum of five.

We are going to welcome back everybody on the panel and welcome to those of you who are civilians in the audience. That means you don't earn your living doing this. Be happy that you don't.

We have two members of the Public Employment Relations Board that are nominees that I'd like to have come up in tandem, Sally McKeag and Karen Neuwald. If you would do that, please. You don't have to talk to each other.

What I'd like to do is just ask you both to make preliminary comments, then we'll ask for testimony.

MS. McKEAG: Good afternoon, Chairman Perata and Members of the Senate Rules Committee, and Happy New Year.

It is a privilege to appear before you as an appointee of the Public Employment Relations Board, a quasi-judicial body responsible for the administration --

CHAIRMAN PERATA: Better tell us your name, please.

MS. McKEAG: Oh, I'm sorry. My name is Sally McKeag, an appointee for the Public Employment Relations Board.

CHAIRMAN PERATA: Good. The rest is down hill.

MS. McKEAG: Thank you.

But as an appointee to the Public Relations Board, a quasi-judicial body, we are responsible for the administration and enforcement of California's seven public

sector collective bargaining laws. Of the approximately 2 million public employees and 7,000 employers in the State of California, these laws cover employees working for the public educational system, from pre-kindergarten to the community college level, state government employees, employees working for the California State University and the University of California systems, as well as the Hastings College of Law, and finally, the employees employed by California cities, counties, special districts, trial courts, and the Los Angeles County Metropolitan Transportation Authority.

The primary mission of the Board is to promote harmonious relations between public sector management -- public sector employees and management, with an emphasis on give-and-take of collective bargaining, mediation, and conciliation as the first step to dispute resolution. I wholeheartedly support this approach as the top priority of the Board.

Throughout my 20 years as a public servant in the state and federal governments, as well as my early employment as a legal assistant in the private sector, I have earned a reputation of being a no-nonsense, pragmatic, fair-minded straight shooter who has worked hard and has been known to get the job done.

I climbed the proverbial ladder step by step, and with each step I've learned the value of teamwork, the importance of earning trust and respect of colleagues. I would have never gotten this far without relying on the lessons learned throughout my career. And that's again teamwork, mutual

trust and respect, professionalism, responsibility and accountability. These qualities will continue to serve me well as a member of the Public Employment Relations Board.

I believe that my background and experience will enhance my ability to administer and enforce California's public sector collective bargaining laws in a professional, fair, and a consistent manner. And while doing so, I will promote cooperation, consensus building, and mutual respect during the resolution of labor relations disputes.

Again, it is a privilege to be here before you today. I'll be happy to answer any questions, and thank you very much.

CHAIRMAN PERATA: Thank you very much.

Senator Ortiz.

SENATOR ORTIZ: Mr. Chair and Members, thank you so much. I'll take just a little bit of your time. Let me just thank you for allowing me to briefly address the Committee today.

I wanted to come here today to speak on behalf of Karen Neuwald. Ms. Neuwald has been a constituent of mine. She is before this Committee for your confirmation, and I'm here to support that confirmation.

I've known Karen for almost ten years. I've worked with her on many legislative issues and have represented her, of course, in the Assembly and now as a State Senator.

She has excellent qualifications. She is someone that is very honest and very direct in the information, and is very helpful when we run into a bump. She's exhibited, I think,

the kinds of skills that you would like to see in an appointee, in that she understands the nature of the relationships of politics, but brings a really strong, compelling, sound policy background, and has had a successful, I think, relationship with both sides of the aisle.

She has served, as you know, as a member of the Public Employment Relations Board since July of last year. Prior to that job, she served as the Legislative Director for three state agencies: Cal PERS, the Department of General Services, as well as DPA. She started her career at the Legislative Analyst's Office.

I've worked with her over the years. She was Assistant Director for Legislation at DGS. We worked extensively on many variations of legislation relating to state-owned properties, as well as enhancing the commercial and housing development in the CADA boundaries over the years, not without controversy, but she led as a professional and was very, very helpful as we negotiated some sensitive areas, and incredibly responsive to inquiries from Legislators. And I think that's one of the greater skills that she brings, is her ability, and understanding, and appreciation of the need to have a strong relationship with Legislators, again, on both sides of the aisle.

I think the state is well served by her appointment to the Public Employment Relations Board, and I wholeheartedly support her confirmation and hope that you will as well.

Thank you, Mr. Chair.

CHAIRMAN PERATA: Thank you, Senator.

Welcome.

MS. NEUWALD: Thank you.

CHAIRMAN PERATA: That was quite glowing.

MS. NEUWALD: I like those kind of testaments.

Mr. Chair and Members of the Committee, Karen Neuwald with the Public Employment Relations Board.

I won't repeat what Senator Ortiz said. I was going to give you a little of my background, but I think she did a good job of that.

As my colleague also brought up, I think PERB is tasked with administering and enforcing California public sector collective bargaining laws in an expert, fair, and consistent manner. We are also tasked with promoting improved public sector employer-employee relations, and providing a timely and cost-effective method through which parties can resolve their labor relations disputes.

It is really quite an honor and a privilege for me to receive this appointment.

I started my career, as the Senator mentioned, with the Legislative Analyst's Office in this policy arena, which I continued at the Department of Personnel Administration. And as I continued my career in public service with other state agencies, I've always tried to strive to work with both sides on an issue on both legislative and administrative issues, and to achieve a positive outcome where ever possible. I believe this approach and experience will serve me well addressing the issues before PERB.

One of the most important responsibilities faced by all Board members is to promptly review each case before us. I will comprehensively examine the facts of each case and reach a timely, fair, and reasonable conclusion based on those facts within the parameters of the law. And as part of these efforts, I've worked collaboratively with fellow Board members to try to process these cases quickly, and also present organized and clear opinions to the parties.

Again, it's a pleasure meeting with you today. I'll be happy to entertain any questions the Committee might have.

CHAIRMAN PERATA: Thank you.

Any questions from the panel?

Those here in support may come forward and briefly say hello.

MR. READ: Mr. Chairman and Members, Aaron Read, here today representing the California Association of Highway Patrolmen.

And I actually go back to Karen's days at the Legislative Analyst's Office, and we became friends at that time. I worked with her in every capacity that she's had -- Department of Personnel Administration, General Services, and PERS -- where she's ably represented them in their legislative arena.

There were times, of course, when we weren't on the same side, but I have never dealt with anybody more honest straight forward than Karen. She has truly been an effective representative, often for me, for the other side.

The PERB is a neutral board. I think she will bring a lot of skill and talent to that task. And she's a woman of her determination, and she'll do, I'm sure, the best job possible. An excellent choice by the Governor.

So, on behalf of the Highway Patrol Officers, we're proud to be here in support.

CHAIRMAN PERATA: Thank you.

MS. BOUMA: Mr. Chair, Members of the Committee, Christy Bouma, representing the California Professional Firefighters.

I just wanted to stand up and offer our support of the confirmation of Karen Neuwald. She will be overseeing the statutes that apply to public servants. She has been a public servant for the greatest part of her life, and so she has first-hand knowledge of how to take care of the people that she's serving.

And so, we proudly support her confirmation.

CHAIRMAN PERATA: Thank you.

MS. ZAMARRIPA: Senator Perata and Members, I'm Karen Zamarripa with the California State University, here also in support for Ms. Neuwald's confirmation to PERB.

I've had the opportunity to learn a lot from Karen over the years, starting when she was at DGS. We've done a lot of work together on PERS issues.

I think that the key here is that Karen is as smart as a whip, as my mother would say, knows issues better than anybody that I've, at least, had the opportunity to work with, a very dedicated public servant, which I think is a very

important service to the people of California, and is a problem solver, which it seems to me is a key role for PERB and the members of that Board.

So, I would encourage your confirmation. Thank you.

CHAIRMAN PERATA: Thank you.

MR. STENBAKKEN: Mr. Chairman and Members, Dwight Stenbakken, League of California Cities.

Again, we're in support of Karen's appointment. She is a balanced person of integrity. I think she will make a great PERB Board member.

Thank you.

MR. KEIL: Mr. Chair and Members, Steve Keil, State Association of Counties, here to support both nominees.

Like others who have spoken before you, I've had the pleasure of working with Karen some 15 years, and everything that was said I can repeat as well.

We've had the opportunity to interview both of the nominees, and we find them to be the kind of objective, balanced persons who will serve all interests before the PERB Board well.

We do ask for your approval. Thank you.

CHAIRMAN PERATA: Thank you.

MS. VEGA: Mr. Chair, Caitlin Vega, California Labor Federation, also here in support of Karen Neuwald's confirmation.

CHAIRMAN PERATA: Thank you.

MS. CASTRO: Michelle Castro for Service

Employees International Union, also in support of Ms. Neuwald.

CHAIRMAN PERATA: Thank you.

MR. BALLA-HAWKINS: David Balla-Hawkins with the California Faculty Association.

We find Karen Neuwald to be an extremely knowledgeable, thoughtful individual, very fair in our dealings with her and dealings with many people in some situations that we've had to disagree with. We think that she'd be a great member for the Board.

We ask for your support. Thank you.

CHAIRMAN PERATA: Anybody further?

Questions? Motion?

SENATOR BATTIN: Move.

CHAIRMAN PERATA: Any opposition? After all that, who could there be?

SENATOR BATTIN: Renew my motion.

CHAIRMAN PERATA: We have a motion to approve both members. Call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

MS. NEUWALD: Thank you very much.

CHAIRMAN PERATA: Mr. Jensen, would you like to come on up, please, the State Building Standards Commission.

Welcome.

MR. JENSEN: Good afternoon, Chairman Perata, Members.

My name is Stephen Jensen. I currently serve on the Building Standards Commission in the Fire Protection Engineer position. I'm currently a registered fire protection engineer.

I'm also a building official, a California building official, have been for the last 20 years in three California cities. Actually, one California city where I currently serve as the Chief Building Official is for the City of Napa. Previous to Napa, I was the Chief Building Official for the County of Marin for approximately 15-and-a-half years. Prior to that, I worked as a Director of Building and Safety for the County of Lake.

I'd like to highlight some of my accomplishments, the ones that I feel particularly proud of during my career. I was involved with quite a few building standards. I've been involved with building codes most of my life.

Prior to my public service, I was a building contractor, so I've seen it from both sides of the counter.

I've been instrumental in providing direction to the Board of Supervisors to allow for fire sprinklers to be

placed into residences on a mandatory basis in the County of Marin. This was particularly important for saving lives, as most of you know. Fire sprinklers have been proven to be a life safer.

In addition, I've also been involved with a mandatory seismic gas shut-off. As you all know, we're in earthquake country. When earthquakes happen, the first things that usually pop is the gas line, which causes fires.

Another item I was involved with was the propane tank anchorage requirement, that in an earthquake, what we typically would see in mountain scenes is a propane tank rolling down the hill with a potential for causing additional fires, especially in those areas of wildland situations where it could be a potential for wildland fires. I think it was extremely important.

I was fortunate enough to work in a county that was pro-green, green building, so we did a lot of green building seminars. We did a lot of green building, pushing to allow for a contractor to use alternative materials. I saw such unique structures as straw bale houses being constructed. I saw rammed earth.

We required that those larger homes being built don't use up any more energy than -- if they went beyond I think it was 3500 square feet, that they don't use any more energy beyond that. So, I think that's extremely important to highlight those. You know, everybody's concerned about energy; everybody's concerned about the environment. I'm extremely proud of that.

I've served on various committees throughout the state also, serving on the Urban-Wildland Interface Committee for the State Fire Marshal. This is, as you know, in wildland situations, we looked at building materials that would somewhat save the house in wildland situations; you know, protect property, protect lives, which is extremely important.

So anyway, those are just a few that I wanted to highlight.

I know that I've got some opposition, and the opposition is coming from the disabled community over a lawsuit that was filed in Marin County. There was three buildings that were in direct control of my Building Department. They involved a video store, a restaurant, and a drugstore.

I made some decisions. Those were based on firm, solid-ground decisions. I stand behind those decisions, and I think those were questioned, as I think anything can be questioned.

So, feel free to question me on any items that may come up, and I think you'll maybe wait until after testimony from other people.

Thank you.

CHAIRMAN PERATA: Thank you.

SENATOR CEDILLO: In the Court's finding on the lawsuit --

MR. JENSEN: Excuse me? The Court's finding, what happened was, Marin County was sued by the State Attorney General over access violations that they had agreed to take care of some 12 years ago. Those violations were not corrected, so

they did another stipulated agreement about two or three years ago. In that stipulated agreement, the County admitted to no wrong doing. It was settled the same day that the lawsuit was filed.

SENATOR CEDILLO: The results of the lawsuit?

MR. JENSEN: The results were that, I think, we've got a better situation. We've got the disabled community more protected now. We've got mandatory requirements for education within the County. We've got mandatory forms that are now being used, you know, for complaint process, and the overall situation has improved. It has brought to the political bodies a situation that brings it up to a higher level than it was in the past, where it should be.

SENATOR CEDILLO: Let me see if I can be more specific.

So, the State sued Marin on questions of access and noncompliance?

MR. JENSEN: Yes.

SENATOR CEDILLO: Then the State had to return and sue them again.

So my question is this. Was there a judicial conclusion from the Court on questions of your utilization of discretion?

MR. JENSEN: I'm not an attorney, so all I know was that the lawsuit was filed, and it was settled the same day. So, I don't think it went before a judge, but I could be wrong.

SENATOR CEDILLO: Were there agreements that were submitted to the Court?

MR. JENSEN: Yes, there was a stipulated agreement that required that the County --

SENATOR CEDILLO: More specific. People have a concern about your conduct. This is really about the exercise of your discretion and your conduct within a framework of choices that you make.

And you stand by them, and I respect that.

My question is, someone else evaluated that conduct, and what were the findings, whether it was an agreement or judicial findings on your conduct?

MR. JENSEN: There was three cases that involved the three buildings. Of the three buildings, I resolved all three of them in my own mind. The State had hired an outside consultant on two of them. They disagreed. One of them was completely taken care of, so there is no violations there.

SENATOR CEDILLO: Was there comment in the judicial finding with respect to that?

MR. JENSEN: No, there was not.

CHAIRMAN PERATA: I'd like to hear from anybody in opposition to the nominee. I'm sorry, in support. I apologize. I'm still on vacation.

MR. RAYMER: Thank you, Mr. Chairman and Committee Members. I'm Bob Raymer. I'm Technical Director and Staff Engineer for the California Building Industry Association.

I've had the good fortune to work with Steve in a variety of capacities for the last 15-plus years. Most recently I served for three years with Steve on a very time-consuming task force that was charged with the development of the state's

first set of urban-wildland interface fire safety regulations. This is a new set of regulations for the residential sector.

I would like to say that during that three-year period, we had a very diverse group of interests. We had a variety of product manufacturers, designers, architects, engineers, developers, local government, building departments, fire safety, you name it. It could have been equated with herding of cats, but I'd like to say at the end, we all were marching to the same drum, which is very, very rare in such sensitive issues.

Having said that, the State Fire Marshal, Ruben Grijalva, Kate Dargan, the Assistant State Fire Marshal, and Steve were the three primary individuals who could be basically thanked for getting this very diverse group to march to that singular drum.

In September, the Building Standards Commission unanimously approved on an emergency basis these set of regulations, making California the first state in the nation to apply these regulations on a statewide basis.

I think California would be well served by the confirmation of Mr. Jensen. I would like to say personally that his overlap between both fire safety understanding and his long relationship with the enforcement and development of building codes are two very diverse areas of expertise that rarely you see person with such overlap. Once again, I think California would be well served with his confirmation.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

MR. MATHISON: Good afternoon, Senator Perata and Members of the Committee. My name Dennis Mathison. I am the Fire Marshal for the City of Roseville.

Today I'd like to express my support for Steve Jensen for his current role on the Building Standards Commission.

I'd echo what Mr. Raymer just said. He stole a little bit of my thunder. But I'd also like to mention one of Mr. Jensen's fine attributes, and that is, as a true facilitator of bringing groups together. And two key groups in this state are fire service representatives and building officials with regard to any issue dealing with fire and life safety. Those two groups can struggle sometimes, and Steve has the ability to bring them together.

He currently has a role in the California Building Officials and California Fire Chiefs Advisory Group, which is a very important group, that he plays a role of facilitating communication between our industries. And in doing so, Steve has the ability to help facilitate good dialogue, which results in solid fire and life safety throughout the State of California.

With that, again, I'd like to express my support for Steve.

CHAIRMAN PERATA: Thank you.

MR. WHEELER: Good afternoon. Matt Wheeler representing the California Building Officials, over 300 local jurisdictions statewide.

I've had the privilege to work with Mr. Jensen

for quite sometime now. He's a very long time and active member over 20 years with our association. That includes committee chairmanships, that includes a lot of extracurricular type activities. These are busy people. He's the head of a local Building Department; that means there's a lot going on, and he's found the time to commit to the industry, working alongside the Association, trying to move many things forward in this state. That includes disabled access. That includes new building standards, building codes.

But more predominantly in Mr. Jensen's circles, he's been quite the progressive visionary when it's come to some of the newer practices and some of the California's local communities, that's eco-friendly, green-type building practices that you don't find too often.

So, it's an honor to stand up here beside him, and I look forward to hopefully continuing our work together as a confirmed commissioner.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. BLACKSETH: My name is Kim Blackseth. I was asked by Mr. Jensen to come today to express my relationship with him over the last 15 years.

I'm a disabled access consultant currently located in Oakland, California, although my business for many years was located in Marin County. I was a member of their Planning Commission for many years, over 10 years. I was on their Building Permit Appeals Board for many years, their Airport Land Use Commission for many years, was very active in

the community.

My current role as a disabled access consultant is to work with businesses and governments throughout the state. I worked with hundreds, maybe even thousands, of businesses, including the California Attorney General, Department of Corrections, Sacramento Kings, Golden State Warriors, Bank of America. I could go on for quite a period of time. That's what we do.

In addition to that, I work with a fair amount of building departments currently, probably over 15. At any given time, I'm working with a building inspector or some mayor. They include Fresno; they include Escondido, Watsonville, three or four communities in Marin and others.

I've worked with Mr. Jensen in that role professionally for many years. I found him extremely capable, extremely knowledgeable.

Like any building official, you're going to find decisions that not everyone's happy with. Certainly he's no different than any building official I've ever worked with. There's decisions, both disabled access and others, that people haven't been happy with. Certainly I've been involved with some of those. There's constituents in the room that have been involved in some of those.

And I'm certainly able to answer questions about in particular the video store that I was actively involved in, which was one of the decisions you asked for. In fact, Mr. Skaff's here also. He was on the other side of the fence, and I'm sure he will address that in detail. I would be glad to

also.

That particular case may end up in court. The decisions that he made were questioned by the State Attorney General. Independent legal counsel has decided -- has offered opinion to the applicants that, in fact, Mr. Jensen's decisions were correct. In fact, that may end up in court.

But I really want to say, rather than get involved in the individual decisions of each and every case, building officials constantly are second-guessed. Decisions don't make everyone happy, and he is no different.

But what I do find is, he is very capable. He's very knowledgeable, and I found that he's an extremely good appointment for the Building Standards Commission.

And I thank you, and I will be back if anybody has questions.

CHAIRMAN PERATA: Thank you very much. We appreciate it.

SENATOR CEDILLO: Question of the witness.

We all make decisions that people are unhappy with.

MR. BLACKSETH: Absolutely, sir. I make them every day.

SENATOR CEDILLO: We run for office, and in fact every day we make decisions that people are unhappy with.

MR. BLACKSETH: Understood.

SENATOR CEDILLO: That's fine.

I think the question for me is whether or not these decisions are made, are they in compliance minimally with

the law? So, that was the first question.

We've had other witnesses come here, other candidates come before us, where their conduct wasn't a mere exercise of discretion but actually was a breach of the law. Then they were instructed of that, and they continued to think that they knew better, that they had a deeper understanding, that they had a greater discretion than the courts directed them.

So, the first question is, is it an exercise of discretion that's within the framework, the parameters, of what the law gives him?

MR. BLACKSETH: It is my opinion it was an exercise of discretion. It is also -- and I'm not an attorney.

SENATOR CEDILLO: My question is, exercise of discretion within the parameters of what the law gives him?

MR. BLACKSETH: I believe that is correct. It is -- there was a dispute about that exercise of discretion. The Attorney General felt that the -- that the unreasonable hardship granted wasn't granted properly. It was a question of discretion. Was it exercised properly.

That's still going to be litigated, most likely.

I think it was question of discretion. I think that the findings were made properly. That Mr. Skaff will probably discuss the other side adequately, and I'm sure he will.

The letter from the Attorney General was that they felt that the discretion wasn't proper, but I think it was

discretion within the framework of the law. The question is going to be, were the findings made properly. That's certainly one element of it.

I think the answer to your question, it was within the framework of the law. There is a genuine issue here disputed. It will probably be litigated ultimately.

SENATOR CEDILLO: That's really the question, was there an abuse of discretion? There may be different findings.

MR. BLACKSETH: I don't believe, in my opinion, there was any abuse of discretion. There certainly is a dispute about whether the -- what he did was -- was an abuse of that discretion in the sense of, were the findings made properly, et cetera.

It's still the position of outside counsel that's working with the applicant that everything he did was correct. It's certainly the opinion of the Attorney General, who has a letter, I believe, that Richard has in front of you, that there was a discretion. And ultimately that may be litigated.

I don't find that all that particularly unusual. I end up ultimately as an expert witness in a fair amount of cases where that's not unusual.

SENATOR CEDILLO: Okay, thank you.

CHAIRMAN PERATA: Thank you.

Next up.

Any others in support?

In opposition?

MR. SKAFF: Senator Perata and Members of the

Committee, my name is Richard Skaff. I'm a resident of Marin County.

I am recently retired as the Deputy Director of the Mayor's Office on Disability in San Francisco. Prior to that, in fact in 1989, I was hired by then-Mayor Diane Feinstein to be a Chief Building Official within, at that time, Bureau of Building Inspection in San Francisco.

I don't mean to take your time speaking about me, but I wanted to give you a little background as to my knowledge of the issues.

I retired, as I said, last May after 15 years with the City, ending up as the Deputy Director of Physical Access. In other words, I was the code and regulatory expert for the City of San Francisco on access issues.

I want to give you just a very brief other listing of my background. I started the Marin Center for Independent Living, which is one of the 28 state-funded independent living centers in California. I was the first Board President and Executive Director in 1978.

I have been on the Building Standards Commission Advisory Committee on Fire and other related code issues. I have been a member of DSA's Universal Design Advisory Committee. I've been a member of the H&CD advisory committees on housing codes, and in fact, with both State Architect's Office and H&CD, most recently with H&CD, working with Mr. Raymer on some changes in multi-family housing requirements, and also presently with the State Architect on detectible warning, the yellow bumpy things you find for blind pedestrians on curb ramps.

I have worked with OSHA, the Office of Statewide Health and Planning, training their staff on California Title 24, the access section of the California Building Code. I have worked with Cal OSHA and worked with one of the administrators of that agency on developing a lift advisory committee, which actually changed state code with regard to wheelchair lift design.

I've been on three of the U.S. Access Board's advisory committees: Vessel Design and Access; Recreation; and Public Right of Way, which I'm still a member of. I'm presently a member of the NFPA, National Fire Protection Association's Advisory Committee on Access. And I am a member of the State Fire Marshal's Evacuation -- Emergency Evacuation Committee, and for the last 15 years have been a member of one of the organizations in California of building officials, California Building Officials. I am still a retired member of that organization.

First of all, Senator Cedillo, I have a copy of the lawsuit if you would like to see it. It does cover a much broader base of issues than three sites.

In fact, I want to clarify one of those sites that was discussed today. I have highlighted some points in there.

I talked with the acting Building Official in Marin County today, Ed Henry, about one of those sites. And he informed me, in fact, that one of those sites that Mr. Blackseth actually represented, Video Droid, has agreed, based on the cases brought by the Attorney General's Office, has agreed to

make major modifications to its front entrance and its parking to bring it into compliance with California Building Code.

I must clarify that you should realize that the Attorney General does not take on cases such as this one or the two others that he took on at the same time, the City of Mill Valley and the City of Del Mar, California. These three cases were based on a pattern and practice, very important language, a pattern and practice of nonenforcement of California Building Codes.

As a former building official for the City of San Francisco 15 years, I understand that there is no perfection in the industry. We all make mistakes. We make decisions that may or may not be correct in one or another person's eyes.

But when Mr. Lockyer or another Attorney General takes a case of a pattern and practice, it is much more than just one or two mistakes or difference of opinion.

CHAIRMAN PERATA: Let me stop you right there.

The County of Marin and the City of Del Mar -- I don't believe it's an incorporated city -- those that are sued are the elected officials. They bear the responsibility.

MR. SKAFF: If you look at the lawsuit, though, it specifically talks about the Building Department. It specifies --

CHAIRMAN PERATA: Who has the responsibility for that?

MR. SKAFF: The Building Official is the decision maker typically because the Board of Supervisors or City Council are not professionals. I've been a city council member and a

mayor in the town of Corte Madera in Marin County. Those officials typically don't make professional decisions on a day-to-day basis about code or regulatory-related issues.

CHAIRMAN PERATA: I've been on a Board of Supervisors. I get the way it goes.

There's just two questions for me. Either this man's incompetent, or you think he's insensitive or basically doesn't have any regard for persons with disabilities. Which is it?

MR. SKAFF: Senator Perata, I can't look into Mr. Jensen's mind and know what it is.

All I know is the disability community's experience with Mr. Jensen in Marin County.

CHAIRMAN PERATA: So, you can't represent the entire --

MR. SKAFF: I didn't say I was. I said others --

CHAIRMAN PERATA: Some members.

MR. SKAFF: Members in the disability community that have experienced his decision making and his staff's decision making process.

And not only that, if you look at the lawsuit, it speaks about the lack of management role in assuring training, policies, procedures, and all of the things that a manager, a building official, is responsible to do to assure that his department is run properly and fulfills its roll based on state legislation.

CHAIRMAN PERATA: He's not running the department right now?

MR. SKAFF: No, he isn't. He is running a department in the City of Napa.

CHAIRMAN PERATA: That's immaterial.

Let me ask you this. In the last eleven months, have you found anything wrong with his work in the role that he has right now?

MR. SKAFF: The City of Napa? Absolutely.

CHAIRMAN PERATA: No, in the capacity he's here for. He's not here because of the City of Napa.

MR. SKAFF: He has not approved or made any decisions on access codes at this point.

My concern, and that of others in our community, is that this gentleman, along with other members of the Building Standards Commission, will be making decisions about access codes.

CHAIRMAN PERATA: And you have no confidence in him.

MR. SKAFF: I don't have confidence, absolutely. The issue is, we need -- somebody just spoke about one of the other members that was being appointed today to another commission. And they talked about the issue of serving all interests.

The Building Standards Commission is there --

CHAIRMAN PERATA: Don't take that too seriously. They were lobbyists.

[Laughter.]

MR. SKAFF: I apologize. I should have known that. I'm sorry.

But I would assume the intent of the Building Standards Commission's role is to serve all interests.

When we have a person who's had this kind of background being placed in a role of responsibility to make the kind of decisions that are going to affect my life, based on building code decisions, the decision of whether to listen to those who want something that would provide access or those who don't want something, and there are those on both sides of the fence, as there are in every group, in every area of the building code, we are very concerned that, based on his background, we can reasonably assume that we won't have that type of interest to serve all parties within the State of California.

We have an aging population, Senators. And that aging population -- I hope none of you will be facing this -- the possibility of aging without disabilities, a disabling condition lessens the older you get. I'm not planning on aging any longer, and I've already got my disability. But all of you have to face the fact we are all aging to a longer period in our lives, and because of that, the issues of accessibility, although not taken seriously to this point generally, had better be. We will either allow you to live independently in your homes and in your communities, or you'll be living in places like Laguna Honda Home in San Francisco, which I wouldn't suggest that would be a place you'd want to go. Not that they're bad people there, but when you have the choice of living independently in your community and functioning as an equal in your community, or being put in a convalescent home, the choice

is very clear for me.

So, I hope you will not only consider the lawsuit, and the fact that the Attorney General thought there was enough concern to file a case against this agency that this gentleman was managing, but also because of the experience we have had, the disability community has had.

There's a great concern these days with the lawsuits that are being created by the disability community. Why are those happening? Those are happening because there's a failure of the system to provide the management of enforcement, design, and construction.

So what ends up happening is, people with disabilities have to end up as the enforcer. That's not the way the system should work.

Thank you.

SENATOR CEDILLO: Actually, the system's designed for that.

I have the Complaint, but I need the conclusion because these are allegations. What I want to do is find the findings. So, I appreciate the allegations, but --

MR. SKAFF: The -- as Mr. Jensen said and as Mr. Blackseth said, there was a settlement.

SENATOR CEDILLO: I'm interested in those if you have them.

MR. SKAFF: What the settlement was, that they would set up policies and procedures, and they would re-review.

Again, one of the cases now is being corrected, the Video Droid. The other, the Walgreens, one of the other

four or five that were specific, is probably going to go to court with the Attorney General and the County actually taking the business to court.

So -- and these are based on violations that were allowed. The Walgreens Drug Store, for example, wasn't like the Video Droid, which is right next door. It was a brand-new building, brand-new site, ground up, all new. Numerous code violations that were permitted.

CHAIRMAN PERATA: Senator Ashburn, you had a question?

SENATOR ASHBURN: Yes, I do.

I just wanted to follow up, Mr. Chairman, on this issue of the lawsuits. I'm looking at a letter from the Marin County Counsel that identifies the case, People Versus Marin County Board of Supervisors, and specifically speaks to violations cited at county facilities: an auditorium, a county park, a county roadway. And identifies that Mr. Jensen in his particular department was not the lead official for compliance on those public facilities. And that the matter of the drug store, the video store, and the restaurant were completely separate items from this case against the County, and that in each of those instances, they've been resolved satisfactorily.

Is that the case, Mr. Jensen?

MR. JENSEN: Yes it is.

MR. SKAFF: May I speak? That is not the case. The Walgreens Drug Store, again, I talked to Ed Henry, the acting building official for Marin County today --

CHAIRMAN PERATA: You've heard of hearsay.

SENATOR ASHBURN: But my point is that those are not included within the Attorney General's action against the County of Marin Board of Supervisors.

The specific buildings involved or the county facilities involved in alleged violations of access involved the Veterans Auditorium, a county park, and a county roadway. And that the County Counsel identifies that Mr. Jensen was not the lead enforcement official or building official involved in the jurisdiction of the county on those particular facilities.

MR. SKAFF: And I'm not saying that's the case. But if you look at the Complaint --

SENATOR ASHBURN: I mean, to have your description, we would believe the Attorney General filed a suit against Mr. Jensen personally, and that's not the case.

MR. SKAFF: No. Sir, it speaks to the Building Department in the Complaint. I have the Complaint here, if you'd like to look at it. This is the document that was filed against the county that stated, yes, it was buildings and facilities that are --

SENATOR ASHBURN: So they threw it out and, by the way, there were some private buildings that Mr. Jensen -- that there were violations on, and he, in working to resolve them, granted hardship exemptions. Therefore, he's a bad guy.

MR. SKAFF: No, not at all. As I said earlier, the Attorney General will not file a case based on a bad guy.

Our Attorney General filed a case because there was a pattern and practice.

SENATOR ASHBURN: But not against Mr. Jensen

specifically. And on the matter of the violations that are cited in the case brought by the Attorney General, they are on public facilities not under Mr. Jensen's area of authority.

MR. SKAFF: Senator, I've spoken to it. As I've said the original complaint included as examples businesses that were given permits that did not comply with the code, the California Building Code access requirements. So, in fact, the Building Department -- of course, when a county has a case filed against it, it's the Board of Supervisors that's filed against, because they are the policy body that has control overall, the administrator of all the agencies within it.

SENATOR BATTIN: Let me ask you this.

MR. SKAFF: Certainly.

SENATOR BATTIN: If I sued you, is there anything that stops me from saying anything I want about you in my original complaint, whether it's got to do with reality of the situation or not?

MR. SKAFF: In a general sense, I guess not.

If you're saying that about the Attorney General --

SENATOR BATTIN: The complaint is, you are bouncing back and forth between two things as if they were one.

MR. SKAFF: How is that, sir?

SENATOR BATTIN: You keep going back to the complaint. If you look at the complaint.

The Complaint is what a lawyer drafted up. It's as egregious as he possibly can make it, and then you get to the settlement.

And that's why Senator Cedillo said, "I want to see the findings."

The Complaint is immaterial to me, because it's just an accusation.

And Senator Ashburn then continues this by saying, wait a second. If you look at what the Attorney General has said, the nominee is not even mentioned in this. As a matter of fact, he is excluded from this area. They're pointing out that it's not even his area that he has authority over, which is having the allegations made against.

So, I appreciate that you have opposition. We hear hundreds of nominees. And what we try very hard to do is to make sure that we have somebody who is capable and competent to do the job. And we hear the people who support them, and we hear the people who oppose them. And sometimes some of the people that oppose them are very good, and they mean well.

But I mean, I'm hearing things get melded here together. Frankly, sir, I'm not persuaded by it.

MR. SKAFF: Thank you. I'm sorry I wasn't able to clarify my position.

CHAIRMAN PERATA: Thank you.

Next.

MS. ARNOLD: Thank you, Chairman Perata and Members of the Senate Rules Committee. My name is Connie Arnold. I'm a disability policy consultant and a disability rights advocate for over 25 years.

I want to tell you, I've also lived in Marin County for 13 years, from 1982 to 1994. A couple years after I

was run over by a Marin County Public Works truck, I left Marin County. I don't have good experiences there.

I'm here basically in opposition to the appointment of Steve Jensen. And I wish that Maggie Dowling was here today because I know she sent in by fax information that might answer some of your specific questions.

I remember during the time that I lived in Marin County from, you know, that long period of time, 13 years, it was like batting your head against a wall, trying to get access improvements even to the Marin County Civic Center. That's the Frank Lloyd Wright Marin County Civic Center. And yearly, we would go before the Board of Supervisors and have difficulty with getting access.

And it stemmed primarily also from the involvement of the building officials for Marin County. Things like access to doorways, access to the elevator buttons being incorrect, access to parking spaces not being proper.

And I remember the park down the street. I happened to live down the street from the Marin County Civic Center, so I used to go up there on a weekly basis. And whether it was curb ramps, or anything to do with the building, or anything to do with the playground, I know we fought, trying to get accessibility to the playground across from Marin County Civic Center.

A friend of mine who's since passed away, she was a mother, and her child was able bodied. She wanted to take her child to the playground and, you know, supervise like other mothers their child, participating. And she didn't have

access.

So, the fact that the Attorney General filed a lawsuit based on a pattern and practice says something about Mr. Jensen. I know if Maggie D. were here, she would say when she worked at Marin County Center for Independent Living, she worked directly with the building officials, and working on access. And she said it was no different, and she was there after I was there, about butting her head up against a wall.

So, you know, after awhile of beating your head up against a wall, we had this period of time where, between '82 and '90, we had Title 24. We had certainly access regulations going back to 1968, but from 1990 forwards, we had some hope with the Americans with Disabilities Act that things would change.

Unfortunately, it takes an awful lot of access complaints and awareness by an Attorney General to intervene on the behalf of persons with disabilities and members of the community who are -- you know, want to age in place to impact change that is offset by a settlement agreement. And typically, most settlement agreements, they deny any wrong doing. So, that's just boilerplate language.

With the fact that Mr. Jensen is going to be appointed and sit on the California Building Standards Commission that makes decisions about access laws and improvements to access laws, anything that we put through I don't think, for myself, I would have a good feeling about this gentleman here sitting on that committee, making decisions about my rights to participate in the community, and that equity and

fairness is going to be represented for the population of 6 million persons, Californians, with disabilities with him sitting at that table and making his vote public.

So, I'm here on that basis, asking you to not appoint Mr. Steve Jensen to the California Building Standards Commission.

And as Richard Skaff has already mentioned, and I won't belabor it, but all of you here want to age in place. The statistics show that seniors and individuals that are aging want to live at home. And they want to participate in community life.

There's also statistics showing that people with disabilities eat out 40 percent more than the average person because I don't cook, for one. So, eating out is like, well, it's cheaper than hiring an attendant to cook everyday for you, you know.

So, that's why I'm here. I'm here to ask you, as public representatives, to ensure that who you appoint to the California Building Standards Commission is going to represent the enforcement of all laws, and observe the equality and fairness that's deserved of all Californians, including persons with disabilities.

Thank you.

CHAIRMAN PERATA: Thank you.

I would ask any further opponents to simply associate yourself with previous comments, unless you have something other to say. I understand right now a direct case has been made by two about the lack of confidence in

Mr. Jensen's ability to rule fairly on issues affecting persons with disabilities.

So, I'd like that just in the interest of time and the rest of our agenda.

SENATOR CEDILLO: Let me ask you this before we go.

We all agree with the law. We support it. We're all here to implement it.

The problem I'm having, I'm having a problem finding a more direct nexus between this man and all the issues, and themes and concerns that we have.

We are completely unpersuaded by the complaint of the AG. It is that and nothing more. It is a complaint, a legal complaint, a valid complaint, but nothing more than that. It stays within that framework.

Now, you know me and I know you. And any time you come to committee, you're very persuasive, and I'm always a pretty good vote for you.

MS. ARNOLD: And I have a great respect for you, too.

SENATOR CEDILLO: I'm 100 percent, I think. You're very persuasive, and you make very good points.

The question that I'm having is that, I'm having difficulty finding a nexus. You tell me how difficult Marin County has been to change the laws, and they've got all these politically active people, and a U.S. Senator, and blah-blah-blah. I'm glad I live in downtown L.A.

But I'm still having a problem, though, finding a

nexus between the term, the conduct, and the utilization of discretion.

And you know I believe in strict compliance. You know, if it's an undocumented worker coming here to feed his family, we don't want anything for them. But if it's a person who owns a building, they can break the law and exclude California citizens at their whim and say it's important for business.

And, you know, my colleagues are silent on this issue. Then they're not illegals. Then they have a right to a driver's license, and a business license, and the right to do business, and give them a tax break, and a subsidy, and everything; right.

[Laughter.]

SENATOR CEDILLO: This happens, and we go over this, and this comes up; right?

So, the problem I'm having is, if I hear this man say that he understands that the law is for the disabled community, and only for the disabled community, not for the business community, it's not for the owners, but that these laws were designed to protect disabled residents of the State of California, if he says that, and if he exercises his discretion in accordance with that, and there's no demonstration of an abuse of discretion, it's going to be hard for us not to support him because that's a choice.

We can't throw every problem of Marin County, or the City of Marin -- is there a City of Marin?

MS. ARNOLD: It's 11 cities.

SENATOR CEDILLO: We're like that in L.A.

MS. ARNOLD: And I lived in L.A. before.

SENATOR CEDILLO: We can't throw all those things at him. It's not sufficient enough for us, I believe, particularly if he says he understands that these laws are for the disabled community. And that is the reason and what he has to do.

I don't agree with him sometimes, but if it's not an abuse of discretion that's very demonstrative, it's going to be difficult for at least me not to permit the appointment.

CHAIRMAN PERATA: Next.

MS. ARNOLD: Did you want a response?

CHAIRMAN PERATA: No, he didn't.

SENATOR CEDILLO: I only want a response if you can give me a direct nexus.

MS. ARNOLD: I'm going to give you --

SENATOR CEDILLO: Not a degree of competency.

MS. ARNOLD: What I'm going to give you is the fact that, as Richard Skaff has stated to you, I can't reach into the mind of this gentleman.

SENATOR CEDILLO: We're not even interested in that.

MS. ARNOLD: I would like you to ask him personally, and check back, and follow-up, and ensure whether it's, you know, the California Building Standards Commission, which you are governing his appointment here, if you so choose to appoint him, that you follow-up and ensure that he's going to act fairly and equitably, because I don't -- I haven't seen that

in the past, and I would like to see that in the future.

I'm sure that he has some redeeming characteristics, and obviously he has the fire people behind him.

But ultimately, when it comes to the decision making in relation to creating new improvements to accessibility standards, and making decisions about that, if you come before a body and you're not heard, or decisions are no based on when there's lots of support from the disability community, then it's a problem. It's an attitudinal problem.

Unfortunately, I think what is out there in the community mostly is an attitude problem.

And when it comes to accessibility, it's about money. And people don't want to spend money. Because if there was one thing I heard in Marin County it was, we don't have money this year; come back next year. And, you know, how many years do you have to hear that before something is done? And that's not right. That's not acting to enforce accessibility standards, whoever's in charge.

Thank you.

CHAIRMAN PERATA: Next up.

MR. KYSOR: Hi, Committee. Happy New Year.

CHAIRMAN PERATA: Happy New Year to you.

Just for the record, give us your name.

MR. KYSOR: Van Kysor with the California Council of the Blind. I'm also on the Board of Directors of Guide Dogs for the Blind in Marin County.

I'm here to -- I don't know legalese because I'm

not an attorney, and I don't know court decisions that well, and all of those kinds of stuff.

But I do know my members call me up, and they tell me that there's -- every time they try to get curb ramp detectible warnings, you know, the bumpy surfaces on the curbs, they can't get it done. And things aren't happening for the blind and visually impaired in that area. So, that's all I can tell you.

And I can tell you that maybe I should have brought a truckload of our members, but according to your definition, none of that seems to work, even though we have experience in that area where that's not happening.

So, we oppose his candidacy or his nomination. Thanks.

CHAIRMAN PERATA: Thank you.

Anyone else?

MS. RIKER: This is just a brief opposition.

CHAIRMAN PERATA: May we have your name, please.

MS. RIKER: Jean Riker.

Just as my opposition to Mr. Jensen.

CHAIRMAN PERATA: Thank you.

MS. BARNHILL: Hi. My name is Susan Barnhill. I'm the Treasurer of Californians for Disability Rights. I've been an advocate since my disability almost 25 years ago.

And it seems to me that the Building Standards Commission needs to work on their nomination process. There's no women on the Building Standards Commission. There's only one disabled person, and he's not the designated disabled person,

he's just a disabled person.

I think there's probably plenty of women out there who could be on this commission.

I think that the pattern and practice, he was in this department. This has been going on for years. You've got that testimony. It's attitudes, good-old-boy network.

My husband is an architect, and when he was in the second year of architectural school he became disabled. And when he came back to go to school at Cal Poly, they said, "Oh, we don't have disabled architects."

So, it's a pattern and practice from architects, and building officials, and people in the past.

And we also have to remember that the civil rights of people with disabilities are intricately involved with these laws. And if we have somebody on the commission who is not very interested in what people with disabilities are needing, and the people with disabilities are becoming more and more -- my own mother, I've been disabled 15 years; she had a back operation because she didn't want to have to use a wheelchair. Hello. It's not that bad if you can maneuver in the community.

But there's a lot of places where I still go. I go into model homes. I go into brand-new homes that are built, and the damn bathroom doors are too small because they don't have universal design, and stuff like that.

So, we've got a huge thing to go through. If people could just make simple, simple design changes, we wouldn't have to have all this arguing about a half an inch

here, an inch there.

I've been in bathrooms where -- it's supposed to be 18 inches from the center of the toilet to the wall. I've been where it's been 25 to 30 inches, or 8 inches. That makes big difference on how I can use the toilet.

SENATOR BOWEN: It does if you're not in that chair, too, I assure you.

[Laughter.]

MS. BARNHILL: Right. And they continue to make bathroom stalls with the doors going in. What's that about? It's stupid.

So, I think we need to have a change. And we need to ask the Building Standards Commission to come with a new slate of candidates.

He might be fine. I can't speak against him. I haven't been to Marin much.

But from the whole attitude of people in general, it's that pattern and practice of anything but disabled. You know, it's better than the alternative.

CHAIRMAN PERATA: Yes.

Well, your point about how representative this commission is, is one that we've been applying to a lot of commissions, and it's well taken.

If you have a recommendation or two, I'd be happy to take it up with the Governor. He often asks, "What would you suggest?" I'd be happy to. Very good point.

MS. ROBERTS: I'm Linda Roberts. I've been upper body disabled since 1989.

I'm not encouraged when I hear that a particular candidate is no worse than any other building official when my experience with building officials is, they're pretty universally bad on the subject.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. OMOTO: Marty Omoto, I'm a disability advocate, also with the California Disability Community Action Network and a family member.

This is not an attack on a personal level against Mr. Jensen at all, but appointments to positions like this are symbols of government's commitment to people's rights. We're just appealing to you, to all of you, to remember that.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

DR. ABBOTT: I'm Dr. Joseph Abbott. I'm a medical doctor, and I live in Plumas County.

But I go to see my physician in Marin County, and there's no disability parking, the door's too small, the bathrooms don't have grab bars.

Now, I'm used to this in Plumas County, but this is Marin County. And whose watch did this happen on? On Mr. Jensen's watch.

Now, if I did this as a physician, I'd be in trouble. And why isn't Mr. Jensen?

CHAIRMAN PERATA: Thank you, sir.

Anyone further?

MR. SKAFF: Senator, could I add a point?

I just wanted to say, and this is not to be argumentative. But I'm looking at the document I just was given by you, Senator Perata. This is from the County Counsel of Marin County, that gives the County's position on what the settlement was, not the Attorney General's position on what the settlement was, or a court's position on what the settlement was.

The fact is, that the County is now taking those cases on private businesses that all had building permits through the County Building Department, not, as this document says, only one building was part of Mr. Jensen's responsibility. Any building that received a building permit in the County of Marin in the unincorporated county portion of Marin was under Mr. Jensen's authority.

These buildings were examples of what the Attorney General found, as I said, was a pattern and practice. The way this relates, to go back to you, Senator Cedillo, is it relates to an attitude of how the issue of accessibility rates in importance to other issues that a building official would be responsible for, other building code related issues.

This is going to be reflected in the way members of the Building Standards Commission make decisions, and that is the concern. It's not that Mr. Jensen -- I can't speak to Mr. Jensen as an individual. I've had no personal day-to-day -- I don't live with him; I don't have a relationship with him except on professional basis. And professionally, he is being put forward by the California Building Officials Association to the Governor, and he's being -- that appointment is being

approved by this Senate Rules Committee.

The point is, if he has made the kinds of decisions and allowed his staff to make the kinds of decisions, the nexus is, based on those kinds of decisions that were made in Marin County about building permits and about building code enforcement, those same kinds of decision making processes are going to be used at the Building Standards Commission. I believe that's what we're trying is to say.

Thank you.

CHAIRMAN PERATA: Would you like to sum up, Mr. Jensen?

MR. JENSEN: Thank you.

SENATOR CEDILLO: Would you answer the questions that were raised about understanding that these laws were designed for strict compliance for the disabled community, and that they're designed to create an environment, a circumstance of equity and justice for the disabled residents of California and this country?

MR. JENSEN: Let me first state that I'm all in favor of disabled access rights, disabled access laws, have always been in favor of them.

What is in dispute is some decisions that I had made, but it was based on sound information that was given to me.

We make decisions on a day-to-day basis. Sometimes they're right; sometimes they're wrong. It was based on my best knowledge. It wasn't to prohibit someone from becoming unable to get into a particular building or unable to

use that building.

Personally, I have a tenant who is disabled. I'm very, very much aware of his needs. I've made some improvements to my home in order to make his life able to use that house.

My mother, who's 80 years old, uses a cart to get around.

So, I'm acutely aware of the needs of the disabled and will fight. And they shouldn't be afraid of me as a candidate. They should be actually supporting me for being a candidate.

Generally this position is reserved for an engineer. I just happened to be a building official who has some knowledge about access laws. I'm aware of those laws. I'm aware of pitfalls. I'm aware of how to fix those pitfalls, too, and am willing to work with the disabled community. And I welcome working with you, okay?

CHAIRMAN PERATA: Before we conclude, I just asked our staff to check. There are apparently somewhere between 11 and 15 members of this commission.

If there are no women, and I'm not disputing that, that's pretty good cause for being outraged.

But what's happened is, all of these things are designated positions. You have to be engineer; you have to be blue eyed and Italian, or whatever.

I will do this on behalf of the Rules Committee, is to talk to the Governor -- and if you've checked in, I'll give you copy of the letter -- talk to Governor specifically about the difficulty we have, all of us, I think, with not

having a fair distribution of points of view.

We've done that once before that I know of, and that's been with the Parole Board, where it was not reflective at all of the general community, much less the population that people were looking at.

So, we will do that. And if you can give us some recommendations, we may well have to change the categories. Even those these have been male-dominated professions historically, there has to be people -- women and disabled -- who would be able to qualify.

I believe the Governor's sensitive to these kinds of issues. You know, he's new here, and a lot of this is new to me, and I'm not new here.

So, under any and all circumstances disproportionately concerned with this individual, there's a much broader problem here, and I want to thank you for evidencing that and bringing it to our attention. It will not go unheard.

If you leave your name and address, we'll get back to you and try to see if we can help that. So, thank you.

Yes, Senator Bowen.

SENATOR BOWEN: Sitting and listening to all this, and trying to figure out, there's obviously a long history of struggle. And first I just really want to take a moment for all of us to appreciate how tough that struggle has been, and how ongoing it is.

And to tell you that if you come to my house, you'll really have a problem, because it's all steps, up and

down here and there. We don't build with any kind of sensitivity to what it might be like to have a family member who had even just a temporary disability like a knee replacement surgery. We aren't there.

I think that what I've heard here today is that we really do have a continuing big problem. And I think we need to look at the categories.

You know, we profess to be against quotas, and yet we really have statutory quotas for certain kinds of things on this and many other commissions that make it difficult for us to bring in people who have experience rather than education in the formal sense, the education of having lived with the curb cut problem, or all the other problems.

So, I think we ought to, as a Rules Committee, really commit to taking a look at that. And as we deal with this issue in other boards and commissions that will come up where diversity has been an issue, and where having people whose lives are affected by the decisions have been issue.

I think I have struggled with the same thing Senator Cedillo has, which is, how much do you want to lay at doorstep of a particular person?

I don't have benefit of having lived in Marin to know specifically, but I do know that, like many other civil rights struggles, this one has been big and broad.

My sense is that the votes are here to confirm Mr. Jensen.

And so, given that I think what's really important is for all of us to rededicate ourselves to the

broader issues of access and fairness, I in particular listened to your qualifications and the work you've done on green buildings and on sustainability. If we'd done some of those things sometime ago, we would have solved some of our river plumbing systems, and we wouldn't have people whose homes are under water right now.

So, I would like to personally challenge you to make disabled access one of your top priorities during your tenure.

And I would ask all the people who took the time here to come and talk to us, I certainly have learned a lot, to join us here in helping raise the awareness. I know you all do this everyday. I know you do. But for those of us who are not disabled, we still have plenty of room to learn about what the obstacles are. So, I expect to have a lot more e-mail, voice mail, faxes, whatever method it is, and to learn.

And I expect you to be a leader in this field.

MR. JENSEN: I'll accept the challenge.

CHAIRMAN PERATA: And I would just add that, speaking of categories, it occurs to me that I wouldn't quite know what categories to look at. So, it would also be helpful if you would think about the breadth of the categories. That would be very helpful.

If you do as a priority, I promise you in return, I'll do it as a priority.

With that, we have motion to approve. Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

SENATOR CEDILLO: Cedillo Aye.

SECRETARY WEBB: Cedillo Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

Thank you all for being here. We appreciate that very much.

MR. JENSEN: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:53 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of January, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

STATEMENT OF GOALS

Sally M. McKeag, Member,
Public Employment Relations Board

January 4, 2006 Confirmation Hearing
Before the Senate Rules Committee

The Public Employment Relations Board (PERB) is a quasi-judicial administrative body that provides a neutral forum in which to resolve disputes and, by doing so, promotes harmonious relations among employers, employees and labor organizations. The Board oversees collective bargaining statutes encompassing 7,000 public employers and over 2 million employees. PERB's case load significantly increased during fiscal year 2004-2005 as a result of the expansion of its jurisdiction to administer the statutes overseeing the trial courts and trial court employees. Despite the aforementioned increases over last fiscal year, the Board issued a record 142 decisions. These are busy times for PERB.

With a focus on expeditious and cost-effective resolution, the Board emphasizes mediation and conciliation as the first step to dispute resolution. Approximately 75 percent of the Board's complaints are resolved through voluntary settlement agreements – a significant accomplishment that I attribute to the dedication and hard work of the Board's excellent staff and team of experienced, knowledgeable Administrative Law Judges (ALJ).

In cases where mediation is not successful, the next step in evaluating and adjudicating unfair labor practice charges is determining whether or not there are sufficient facts to infer that a violation of the collective bargaining statutes has occurred, establishing a *prima facie* case. If there are sufficient facts, a formal complaint is issued and parties are called together by an ALJ or Board agent for an informal settlement conference. If settlement is not reached, a formal hearing before an ALJ is scheduled. Upon conclusion of this proceeding, the ALJ issues a proposed decision. Any party to the proceeding may then appeal the proposed decision to the Board itself. Decisions of the Board are both binding on the parties and precedential.

I. Expeditious but Thorough Review of All Cases/Rendering Fair and Balanced Decisions

Since the Board's mission is to administer and enforce California public sector collective bargaining laws, my top priority as a Board Member is to provide guidance to all parties by rendering clear and concise decisions in a timely manner. PERB decisions are based on a thorough review of the record while, at the same time, applying pertinent statutes and regulations, current case law, and precedential PERB decisions. Each case is different. Some are cut and dry; others are extremely complex and challenging. No matter what case is before me, I take my responsibilities as a Board Member very seriously. In my opinion, all parties are entitled to a timely, fair and open-minded consideration of their respective charges and appeals. Therefore, I am committed to give each case a full and impartial review, dedicating whatever time and effort necessary to accomplish this goal.

II. Strengthening Teamwork Among Board Colleagues and Board Staff

Another important goal is to pursue and promote a strong and cooperative working relationship with my Board colleagues. There is a need to work cooperatively to ensure that Board processes and procedures are consistently followed, and that cases are moving forward.

Therefore, as it is a priority of this Board to promote harmonious relations among employers, employees, and labor organizations, it is also just as important to me to promote a harmonious and collegial work environment based on professionalism, trust, and respect for not only my Board colleagues but for the Board staff as well. This goal is paramount in order for the Board to be effective and efficient.

III. Working Relationship with Advisory Committee

Earlier this year, PERB Chairman John Duncan resurrected an Advisory Committee comprised of key representatives of public sector, labor, and management organizations to provide recommendations on how PERB can improve. I strongly support this Advisory Committee. Not only should the Board keep an open mind in the review of its cases, but it is also important to keep an open mind on how the Board can improve operations and services. More significantly, it is an opportunity for the Board to lead by example. By working together with the Board's constituencies in a forthright and professional manner, it is my goal that such cooperative spirit and understanding will influence other working relationships in the labor-management community.

IV. Administrative

Another important priority for me is the sound and strategic management of the Board's administrative responsibilities such as the budget and personnel issues. The Board is most appreciative of the additional funding provided by the Legislature. This funding has allowed us to add staff in critical functions, and we are already seeing positive results.

In summary, my goals are simple and straightforward: To administer and enforce California public sector collective bargaining laws in a professional, fair and consistent manner and, thereby, promoting cooperation, consensus building, and mutual respect while resolving labor relations disputes.

STATEMENT OF GOALS

Karen L. Neuwald, Member
Public Employment Relations Board

Senate Rules Committee
January 4, 2006 Confirmation Hearing

The mission of the Public Employment Relations Board (PERB) is to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; promote improved public sector employer-employee relations; and provide a timely and cost-effective method through which employers, employee organizations, and employees can resolve their labor relations disputes. The statutes administered by PERB cover employees of California public schools and community colleges, state universities, state government employees, local government employees (cities, counties, and special districts), trial court employees, court interpreters, and supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

In recent years, PERB jurisdiction has been expanded. In 2000, SB 739 (Chapter 901) was enacted to add local government employees to PERB coverage beginning July 1, 2001. Oversight for trial court employees, court interpreters, and transit employees began in 2004. With the passage of these laws, approximately two million public sector workers and seven thousand public employers are now subject to the exclusive jurisdiction of PERB.

- **Promote Improved Employer-Employee Relations**

Nearly thirty years ago, PERB was created with the goals of promoting improved employer-employee relations and enhancing communication between the parties. To that end, my goal as a member of PERB is to make decisions that will foster stronger employer-employee relations. During my 23-year career with the State of California, I have worked for the Legislative Analyst's Office and the Department of Personnel Administration in the labor relations policy arena. I also served as a legislative director for the Department of General Services and the California Public Employees' Retirement System. I have always strived to work with both sides on legislative or administrative issues to achieve a positive outcome in the best interests of all parties. As a public servant, I am a problem-solver and a seeker of solutions. I believe that my approach and experience will be a great asset in addressing the issues before PERB.

DEC 20 2005

- **Disposition of Cases**

To support PERB's goals of fostering stable employer-employee relations, I endorse efforts undertaken by the organization to ensure efficient and fair resolution of all matters pending before the Board. One of the most important responsibilities faced by all Board members is to promptly review each case before us. I will comprehensively examine the facts of each case and reach a timely, fair, and reasonable conclusion based on those facts within the parameters of the law. As part of these efforts, I am working collaboratively with fellow Board members to expeditiously process our cases and present organized and clear opinions to the parties.

Additionally, with the Legislature's approval, PERB was recently able to hire three attorneys in its General Counsel's office as well as one administrative law judge. These further resources are pertinent to timely processing of all claims before PERB, thereby fostering stable employer-employee relations.

- **Administrative Matters**

I will support the Chair and the PERB executive team on budget, regulatory, and other administrative matters. PERB is providing enhanced automation tools to provide clear communication to our constituents by offering business tools through the Internet. Individuals can access PERB decisions, forms, Board regulations and statutes on the PERB website. PERB is also exploring the option of "on-line" filing of unfair practice charges, to offer another avenue of access for our constituents. I am also supportive of existing efforts to reengage the PERB Advisory Committee of labor and management representatives to seek their input directly on potential actions taken by the Board.

- **Summary**

I am deeply honored to receive this appointment. I look forward to continuing my public service career in California as a thoughtful and fair member of PERB. Public employees, their organizations and representatives, and public sector employers deserve a timely and comprehensive review of their disputes. I am excited to work with my colleagues on the Board and its staff to achieve these ends.

Stephen E. Jensen
85 Autumn Leaf Drive
Santa Rosa, CA 95409
707-539-6364

December 19, 2005

The Honorable Don Perata, Chair
Senate Rules Committee
California State Senate
State Capitol
Sacramento, California 95814

Dear Members of the Senate Rules Committee:

It has been both an honor and a privilege to serve the people of the Golden State as an appointed Commissioner on the California Building Standards Commission (CBSC). When Governor Schwarzenegger appointed me earlier this year, I was humbled to think my credentials and background to be worthy of such credit; however, I realized then, and realize now more than ever, the importance of my position on the Commission in securing and protecting the safety of *all* Californians. Upon your confirmation of my appointment to the California Building Standards Commission, you have my commitment to continue to work tirelessly to protect California's built environment and the people of our great state.

As our elected leadership in California, you understand the importance of the decisions you make, not only upon the individual constituencies that you represent, but upon the entire state of California. As the Mechanical & Fire Protection Engineer appointee to the Commission, I understand that the decisions I make must reflect the consensus of my fellow Commissioners and building industry stakeholders, while protecting the interests of our local jurisdictions and disabled neighbors. I cannot, and will not, myopically make decisions as a Fire Protection Engineer; I make decisions and a fiduciary of the people.

I have over 20 years of public safety experience in local building departments throughout California. I am proud to highlight my experience and contributions within some of the most forward-thinking and progressive building departments in California. In Marin County, I was instrumental in growth of *green* building practices within the jurisdiction, encouraging the use of *eco*-friendly construction products and applications. As a Fire Protection Engineer, I understand both sides of the sensitive relationship between the building and fire industries. For the past year, parallel to my service as a CBSC Commissioner, I served as the Chairman of Building & Fire Advisory Committee, a joint-cooperative between the California Building Officials and the California Fire Chief's Association. I believe in consensus and open-process, which is clearly the function of the CBSC to the state.

As a Commissioner, I have made and upheld decisions that protect the safety of all Californians from my seat as the CBSC Fire Protection Engineer. I have worked with my fellow Commissioners and state agency personnel to bring the next generation of building codes to the Golden State, taking California from following the archaic, out-dated, and un-safe codes that were in place when I was appointed to the Commission to being the first state to adopt the 2006 versions of what will become the California Building & Fire Codes. Since I have been a member of the Commission, we have approved the first Wildland-Urban Interface Code, developed by the California State Fire Marshal under our oversight. This code is designed to protect the homes and lives of Californians who now live in areas that are highly susceptible to the wildfires that have become commonplace in California. This code will save lives, and I am proud to have put my faith into this code with through my affirmative vote as a Commissioner.

There is still much to do and the CBSC is in need of continued stability and proven leadership. As the rulemaking process continues into 2006 with the adoption of Building, Fire, Residential, Plumbing and Mechanical Codes, it is imperative that the State Legislature retain oversight over the functions of the Commission by confirming the very best appointees that California has to offer. I assure you, I represent this high caliber of appointee and upon your confirmation of my appointment, you have my continued commitment to uphold the safety and security of all Californians. With new and advanced codes in place, the CBSC will finally be able to focus on the issues of importance that continue to make California the national leader in innovation, technology and overall way of life. I look forward to being an integral part of this vision for the California Building Standards Commission, which your support and confirmation of my appointment will enable me to do.

I welcome your comments and further inquiry and look forward to appearing before you in person on January 4, 2006.

Sincerely,

Stephen E. Jensen,
Appointee, Mechanical & Fire Protection Engineer
California Building Standards Commission

Richard J. Sawhill
3602 Inland Empire Boulevard
Suite B-206
Ontario, CA 91764
Telephone 909.477.4515
Facsimile 909.477.4516
arcamca@aol.com

December 22, 2005

Via Facsimile (916.445.0596) and Federal Express

Honorable Don Perata
Chairman, Senate Rules Committee
California State Capitol, Room 420
Sacramento, CA 95814-4900

Re: Short and Long Term Goals for the California Building Standards Commission

Dear Chairman Perata,

As a commissioner of the California Building Standards Commission, one of my short term goals is the adoption of the model building code changes that are several years behind schedule for adoption. This is a concern of the residents and businesses of California. The delayed adoption process exposes businesses in California to either an increase in property insurance rates, or the lost opportunity to take advantage of insurance industry discounts. It also delays businesses from taking timely advantage of new technologies, new training methods, and new equipment. Another short term goal is a resolution to the ongoing issue regarding the adoption of plastic pipe model codes.

My long term goals are to ensure the highest ethical standards by the California Building Standards Commission, ensure the public's confidence with an open and public process, and that the future adoption of model building code changes will be completed on a timely basis for the betterment of California.

Cordially,

Richard J. Sawhill

RJS:rjs

DEC 22 2005

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STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 11, 2006

1:33 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

MEMBER ABSENT

SENATOR JIM BATTIN, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

HEIDI J. HARRIS, Member
Water Quality Control Board
North Coastal Region

DENNIS A. LEONARDI, Member
Water Quality Control Board
North Coastal Region

BEVERLY F. WASSON, Member
Water Quality Control Board
North Coastal Region

SENATOR WES CHESBRO

CATHERINE KUHLMAN, Executive Officer
Water Quality Control Board
North Coastal Region

PHILIP G. WYELS, Assistant Chief Counsel
Office of Chief Counsel
State Water Resources Control Board

PAUL MASON
Sierra Club California

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: I'm going to call to order the Senate Rules Committee.

We are a little short-handed today. We have one Member en route, one Member not attending, and someone AWOL. We're going to start as a subcommittee. Usually the fewer we have, the more we get done.

In that spirit, Item One will be put over. Unfortunately, the three of you are going to have to come forward. I'd like to ask Heidi Harris, Dennis Leonardi, and Beverly Wasson come forward as a group, if you would.

These are California Regional Water Quality Control Board, North Coastal Region.

I want to just thank you all for work that you do and encourage you to continue to do it. I know it's not easy. I think as far as I'm concerned, you're in the Lord's hands here right now. I like to take credit for the Lord every once in a while.

I'd like to welcome all of you.

Please call the roll. We have a quorum.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Present.

SECRETARY WEBB: Bowen. Cedillo.

SENATOR CEDILLO: Here.

SECRETARY WEBB: Battin. Perata.

CHAIRMAN PERATA: Here.

SECRETARY WEBB: Quorum of three.

CHAIRMAN PERATA: We're going to begin by having your State Senator. Now, is he going to say something good? He doesn't have to talk.

Senator Chesbro.

SENATOR CHESBRO: Mr. President, no reflection on the new appointee, who I don't know, but I'm going to introduce and commend to you the two members of the board who I'm very, very familiar with, and make a comment about one other issue if I may.

First of all, a relatively new member of the board, Dennis Leonardi, is someone that it gives me a great deal of pleasure to introduce to you. He's a good friend and a community leader beyond Redwood Curtain and from the heart of Humboldt dairy land, which is very different than dairy land anywhere else in the state, let me tell you. We've got the highest butter fat in the world or at least in the country, and that's because those cows graze on beautiful green grass all year round. There's no feed lots, and I'm not talking about the vernacular here.

CHAIRMAN PERATA: That's why they're happy.

[Laughter.]

SENATOR CHESBRO: So, I'm very pleased to introduce to you Dennis Leonardi this afternoon. He's a life-long resident of Humboldt County, and more importantly, a resident of Ferndale. If any of you've been to Ferndale, you'll know what that means. It's a fabulous place. Dennis and his wife Kathleen are an important part of that community and of Humboldt County.

I've had the pleasure of working with Dennis during my time on the Board of Supervisors. He was and is a member of the Humboldt County Farm Bureau, the Ferndale School Board, as well as the Humboldt Creamery Association which, while they have recently rolled out their new line of organic ice cream, it's probably most familiar to many of you as the makers of Costco ice cream on the west coast. So, if you ever buy ice cream at Costco, you're buying Humboldt Creamery, pasture fed ice cream.

Dennis has served on the North Coast Board and demonstrated that he can work with a wide range of interests that have issues and opinions about water quality. He's shown that in both his private life and in his role on the Regional Board that we can have a balance between the needs of agriculture and the needs of environmental protection. He's very much a proponent of stewardship of the land and the protection of natural resources. These talents have made -- and points of view -- have made Dennis a great asset to the board.

So, I hope you'll join me in supporting his appointment.

The other member who's up today who's a long-time friend is being reappointed, so it's not really a new introduction to you. Bev Wasson though, I think, I'm sure she'll explain to you, grows grapes, as have multiple generations of the Wasson family in Sonoma County. Bev also represents that very progressive branch of agriculture that use their role as being to help sustain the natural environment and not simply to extract the products from the environment.

And I think she has reflected that in her point of view on the board, and I highly commend her to you.

One brief editorial comment about a member who's not before you today who should be. The Chairman of Hoopla Tribe, Clifford Lyle Marshall, was removed from the board by the Schwarzenegger administration. I think that is a very, very unfortunate development. It's been ten months, I think, that he has distinguished himself as a great board member, widely recognized by the various folks who have interests before the board, from the environmental community to local governments.

The allegation, which I don't personally agree with, was that the tribal government was not the same as a local government, so he was not recognized as a locally elected official. And I understand the League of California Cities raised that concern.

I think that that is a great loss to the board. It's really the wrong message to be sending to the Native American tribes in our state, that we're not going to recognize them as local elected officials. They are the elected representatives of their tribal members.

And I, by speaking to you today, encourage the administration to find another slot for him, to see if there's another way to get him back on the Regional Water Board, because I think he has a lot to contribute. And it's really unfortunate that his name was withdrawn.

But that's a different tale than my main reason for being here, which is to commend these nominees to you and to introduce them to you.

Thank you.

CHAIRMAN PERATA: Thank you.

Well, there are two of my favorite things here: butter fat and wine. The major food groups.

[Laughter.]

CHAIRMAN PERATA: Would you like to begin?

MS. WASSON: Sure. I'm Beverly Wasson. I have been in the vineyard business and grape growing for the past 27 years. Prior to that, I spent ten years teaching high school physical education and was athletic director, and helped get women's sports started in the school districts under Title Nine. So, I think we've done a pretty good job there.

I'm a past President of the Sonoma County Farm Bureau, and a past President of the Sonoma County Grape Growers organizations, and I'm still a member of both.

I've been very happy to represent the agricultural community as well as the rest of the greater community on the Regional Water Board on water quality issues.

CHAIRMAN PERATA: Thank you.

MS. HARRIS: Hello. My name is Heidi Harris, and I am from Trinity County. There are four living generations in my small town of Salyer, and my family and many more before them.

I currently reside on original zone only land that was in my father's family, and we still live there today. I am the youngest of four girls. And I have a degree in Rangeland Resource Science from Humboldt State University, of which I have been hired to lecture rangeland improvements and

ranchland planning at the University this last year.

I work for the Natural Resource Conservation Service, and now I currently am a private contractor with the NRCS. And I work primarily with large ranches, developing conservation plans, trying to help them utilize their land and be environmentally conscious at the same time.

I look forward to working with the water board because I feel like it's -- it'll be a great time for me to work in the -- in the business end, so to speak, of the deal and then try to still keep -- make sure that the private landowners and that the folks who are working on the ground are as involved as possible in everything that we do and look forward to completing.

CHAIRMAN PERATA: Thank you.

MR. LEONARDI: I'm Dennis Leonardi, and I first want to thank Wes, Senator Chesbro, for stopping by. I appreciate it very much.

I also want to thank you gentleman, you Committee, to take time to listen to us and ask questions if you have questions. Let us answer and share with you the kinds of things that go on, and that we're concerned about, and that we have empathy for.

I'm a dairyman by trade. A long history of community service, a wife who teaches second grade at Ferndale Elementary. I have three children: two girls in college at Cal Poly San Luis; my son's a freshman at Ferndale High.

Just really enjoy being part of the community. And this is an extended community of the North Coast in dealing

with these water issues, which are very important especially in my industry and in our area.

CHAIRMAN PERATA: Thank you.

Do you rotate your meetings around, or where do you meet?

MS. WASSON: Yes, we do rotate them around. For instance, Crescent City, and we've been in Yreka --

MR. LEONARDI: Weaverville.

MS. WASSON: Ukiah, and Santa Rosa.

When we don't have enough funds, we usually end up staying in Santa Rosa. We could use a few more dollars in our per diem account so we can have more meetings.

CHAIRMAN PERATA: I'll make a note of that.

I want to ask you, there's been that ongoing fight with Pacific Lumber. What is the status? What round are you in?

MS. WASSON: We're going to be scheduling meetings in the near future. Actually, I'm going to do that tomorrow with the Vice Chair. And we're getting them back on track, and we'll see where it goes.

CHAIRMAN PERATA: Something else somebody pointed out to me was that the meth labs are raising havoc with groundwater.

MS. WASSON: Water quality issues on, you know, lands that are out in the wild, and we've had diesel spills, and erosion problems due to cultivation of marijuana as well as the meth labs.

Those people getting into the those areas in

winter time, for instance, in Rio Nido, I've had 27 inches of rain since December 26th, and when you try to go on roads that time of year, I mean, it's not very good.

CHAIRMAN PERATA: Better be nice to her, Gil, or you'll get no drinking water. He's from L.A.

SENATOR CEDILLO: It's a long way to travel.

CHAIRMAN PERATA: Do you get support from the law enforcement?

MS. WASSON: Actually we usually go in after the fact, when they have found the problem and have cleared it of dangerous individuals. We don't recommend that our staff go out.

CHAIRMAN PERATA: No, I can appreciate that.

What happens with the remediation though?

MS. WASSON: It all depends on who the landowner is. And actually, it usually is the landowner that gets stuck with the bill.

CHAIRMAN PERATA: Does the clean up and just leave the land?

MS. WASSON: Well, I mean, it's really hard to clean up if it's meth. I mean, the only case that I really have gone through is with Kendall Jackson, had a piece of property off Opina Road. And one of his foremen rented out the barn to some individuals that made meth. And they put all the chemicals down a well. And Kendall Jackson is still cleaning up that well today.

And there were houses in Santa Rosa where there were meth labs, and actually they're so toxic that you have to

tear down the house. So I mean, it's a serious issue.

CHAIRMAN PERATA: Yeah.

Questions? Comments?

SENATOR ASHBURN: Questions. These are directed to Ms. Wasson because you are the returning member of the board.

Senator Aanestad directed a letter to you in May relative to the procedures and practices in conducting the board meetings. Specifically he's raising concerns about the use of executive sessions and about the accuracy of the minutes, and the adoption of the minutes by the board at the following board meeting.

Do you have a response to the concerns that he's raised?

MS. WASSON: First of all, we did have our staff lawyers look into those questions, and they found that there was nothing solid in those accusations.

We also had Craig Wilson at the time who was the head of the Attorney Division from the state come over and make sure that we were re-educated on Bagley-Keene.

And on the minutes, all I can say is that we had a two-hour discussion of how we were going to do the minutes at one of our public meetings, and I've never had that experience before, but I think we worked out all the details on that.

SENATOR ASHBURN: I'm less concerned about what the attorneys advised you than what your concern is as a board member and as chairperson of the board.

What were the purposes for the executive

sessions?

MS. WASSON: That's usually when we go into closed session, is to discuss issues that were in our agenda that are being pursued by the court system. It's court issues where --

SENATOR ASHBURN: Where there are matters of litigation?

MS. WASSON: Matters of litigation.

SENATOR ASHBURN: Is it your judgment that the board is adequately advised of the limitations of the discussion of the topics --

MS. WASSON: Yes.

SENATOR ASHBURN: -- that are eligible for discussion?

MS. WASSON: First of all, it has to be an agenda topic. It has to be on the agenda. And that we are limited to a discussion of what has taken place. Usually, it's the attorneys talking to us and explaining where they are in the suit.

Or do we have -- I guess usually it's where they are in the suit, and what the next steps will be so we're aware of what's going on.

SENATOR ASHBURN: Are you satisfied that the executive sessions have in all instances been utilized for the purposes that are provided for under the Bagley-Keene Act?

MS. WASSON: Yes, I am.

SENATOR ASHBURN: Has there ever been a time in your judgment, because sometimes -- I mean, I'm a former county

supervisor as Senator Perata -- we were advised by attorneys or other staff that the board needed to go into executive session. You know, sometimes it isn't our judgment to do so.

Has there ever been a time in which you have questioned the appropriateness of executive session?

MS. WASSON: I haven't felt that that has been necessary to do. You know, I think about it.

We don't want to discuss something that's not on the agenda or not pertinent. Our time's too valuable.

SENATOR ASHBURN: But in your judgment, the staff has not asked the board to go into executive session and the purpose would be questionable in your mind?

MS. WASSON: No.

SENATOR ASHBURN: And then on the minutes, the two hours was following the concern that was raised?

MS. WASSON: It all depends on the amount of minutia you want to put in the minutes. It was a discussion of how broad do you want the minutes or how narrow, but I think we have found the solution to our minutes. We now have a digital recorder, and you can go on to our web site, and you can listen to our minutes verbatim.

SENATOR ASHBURN: You can watch the meetings.

MS. WASSON: You can hear the meeting. So, I think --

CHAIRMAN PERATA: I bet you that's a big attraction.

[Laughter.]

MS. WASSON: After I've listened to the tapes, it

makes one sound not very bright. I'm going, oh, my God.

CHAIRMAN PERATA: We discovered the same thing. We're a big draw on Cal Span, too.

[Laughter.]

SENATOR ASHBURN: Ms. Wasson, would you describe the nature of your employment?

MS. WASSON: I own, let's see, 37-and-a-half percent of Wasson Vineyards. I own 50 percent of Wasson Vineyards the business. I lease the property from my family. And then my parents three years ago, three-and-a-half years ago, gifted the 50 percent of the ranch to my three sisters and I.

And I have actually hired my nephew three years ago, so I'm semi-retired. Basically my job is to take care of my mom and dad. And when they need anything --

CHAIRMAN PERATA: They were very smart. They gifted, and then look at you.

MS. WASSON: Actually, our office is in their house. And for the first 20 years that I worked on the ranch, my mother fed me lunch everyday, and at times did my laundry, and really took care of me as an adult.

So, this is just a good turn-around to make sure that they're well taken care of.

SENATOR ASHBURN: So, your income is derived from the vineyard business?

MS. WASSON: Yes.

SENATOR ASHBURN: With whom does the business conduct business within the jurisdiction of this particular regional water quality control board?

MS. WASSON: In any given year it changes. We have contracts with different wineries. And right now, I'm not helping with the contracting. My nephew does that and my brother-in-law.

In the past, it's been Murphy Good Winery, Clodaval Winery, Gallo Winery, Simi Winery, Belvadere Winery.

SENATOR ASHBURN: I have your Statement of Economic Interest. Has anyone ever taken a look at the percentage of your income that's derived from the businesses that are located within the jurisdiction of the regional water board?

MS. WASSON: That have permits, yes.

SENATOR ASHBURN: What is the percentage of your income that is related to --

MS. WASSON: It's less than 10 percent. I don't know if it's any, actually, because what I was told was that none of them have active permits. They have general permits.

SENATOR ASHBURN: So, that specific question about the 10 percent threshold has been asked?

MS. WASSON: Uh-huh, as far as I know.

SENATOR ASHBURN: How frequently is it asked?

MS. WASSON: Cat, can you answer that?

MS. KUHLMAN [FROM THE AUDIENCE]: I did a check, not on this year but the year before, so it's not the same as from this year, January forwards, but --

CHAIRMAN PERATA: And you are?

MS. WASSON: This is Cat Kuhlman, our executive officer.

MS. KUHLMAN: Hi. For the record, my name is Catherine Kuhlman. I'm the Executive Officer.

When the issue came up before, I checked. It was last year, so it'd be from the '04 sales. And from what Bev told me, the list of wineries that she had sold to that year, I went in and did a check on the data base to see whether or not they had permits. None of them had permits at that point in time.

CHAIRMAN PERATA: Driver's licenses?

[Laughter.]

MS. KUHLMAN: Learner's permits.

That was the last time I did a check.

SENATOR ASHBURN: Do you do a check every year?

MS. KUHLMAN: No, I don't. I did an informal check simply because the issue had been circulating about another board member and the 10 percent rule. It's the first time -- I'm relatively new at my job -- the first time I'd become aware of it in the same kind of context, and so I just wanted to make sure that we didn't have any other issues that I would need to notify legal counsel in Sacramento about.

SENATOR ASHBURN: Ms. Wasson, you just said to me that each year it changes.

MS. WASSON: Yes, it does. Especially in the last couple years because the price of grapes has gone down, and we had Evergreen contracts, and they decided to end the contracts. So, we've had to enter into new contracts, to the point this year we dropped 50 ton of Cabernet, wonderful Cabernet, nice,

ripe Cabernet, because there wasn't a buyer.

CHAIRMAN PERATA: You should have called Freddy Franzia.

MS. WASSON: That doesn't work either.

Actually, really, there was no tank space this year. It's a cyclic industry.

SENATOR ASHBURN: I think this is a very serious matter. If each year the business relationships between the business that you own and derive your income from are doing business within the jurisdiction of the board, and there's an explicit law that prohibits you from serving as a member of this board should that business relationship rise to the level of 10 percent or greater, and it has not been reviewed on an annual basis, I think there's a very serious issue that's been raised.

And frankly, the fact that you can't identify it, nor can the executive officer of the board identify it is of concern to me.

MS. WASSON: Well, nobody's asked in the past. So, that issue, I mean, I can certainly find out who --

SENATOR ASHBURN: All the laws of the State of California that govern the conduct of people who are elected to office apply to us, whether we read them or not.

MS. WASSON: No, it's not that. It's just that I had been told that none of the wineries that I sold to had permits. And that it was not --

SENATOR ASHBURN: It isn't just the sale of your product. You conduct other business through your vineyard operation with businesses in the area.

MS. WASSON: Well, everyone does.

CHAIRMAN PERATA: I would think that that probably should be answered by everyone.

SENATOR ASHBURN: I agree with you.

But you are the returning member, and what I'm concerned about is past practice.

CHAIRMAN PERATA: Senator, apparently their legal counsel is here.

Would you like to speak to us?

MR. WYELS: If I may, thank you, Mr. President.

Phil Wyels, for the -- my name is Phil Wyels. I'm an Assistant Chief Counsel with the State Water Board, and one of my assignments is to advise the attorneys who advise the regional water boards.

We have a regulation which requires each of the members to submit annual statement. This is not the Form 700. This is a specialized annual statement about income they derive from NPDES permittees. These are companies that have Clean Water Act permits.

Those statements are reviewed by one of the attorneys in our office. If there's anything that looks at all questionable, that attorney follows up with the individual member, just to confirm that we are always following the law in terms of the Clean Water Act requirements, which is a -- it's a disqualification requirement for membership on the board.

SENATOR ASHBURN: With all due respect, I can't believe that a pro forma form is going to cull out the individual transactions in the day-to-day business operations of

something as complex as a winery.

MS. WASSON: I don't own a winery. It's just vineyards.

SENATOR ASHBURN: Of the vineyard operations.

MS. WASSON: All we have is 145 acres of vineyard.

SENATOR ASHBURN: Nor to many other businesses which are owned by or from which individuals have their income derived that may well have business with businesses within the jurisdiction of those boards.

MR. WYELS: You're right. We don't ask them to list every single transaction.

What we do ask is for them to identify whether they receive any income, either personally or through a business in which they have --

SENATOR ASHBURN: Do you know if Ms. Wasson's income and business relationships has been reviewed on an annual basis?

MR. WYELS: The process that we go through with our office is, we receive the forms; confirm that we have received the forms; and then look through the answers. If there's any question that raised by the answers themselves, then we contact the board member and get more details.

So, the answer is, her form, as every other form, has been reviewed at that level.

SENATOR ASHBURN: Thank you.

Those are my questions.

CHAIRMAN PERATA: Any other questions.

SENATOR BOWEN: Don't go away yet, Mr. Wyels.

Let's say you find 11 percent one year. What happens to everything that that board member voted on?

MR. WYELS: The rule is for membership on the board, and as soon as we discover that somebody has exceeded the 10 percent threshold, which happens, frankly. When people sell off large amounts of stock, for example, they let us know, and we do the math, and we advise them whether or not they may remain on the board.

But until that time, the actions of the board, we believe -- until the time at which point they are disqualified from remaining on the board, the actions of the board remain valid.

We have not been subject to any challenges to the previous actions while that board member was on the board.

SENATOR BOWEN: It's just an odd way. I don't know of any better way to do it just off the top of my head, but it's an odd way to try to deal with it, to look back, because you would have a situation where somebody was making decisions at the time when they had violated the law.

CHAIRMAN PERATA: You have a responsibility to recuse; don't you?

MR. WYELS: Well, there's two different types of conflicts. There's the kind where a board member is required to recuse on an individual action.

The conflict that we're talking about is actually a conflict that renders a person ineligible to serve on the board.

We don't wait until the 10 percent has been exceeded. For example, there was a board member who advised me he was going to sell a large amount of stock in utility companies. I talked to him about when he was going to make that sale, and we discussed that he would leave the board prior to making the sale.

SENATOR BOWEN: That seems rather odd to me, because then the rule is that if you hold the stock, no matter how much it is, it's not a problem with qualification. But once you sell it, it is. Which, I think, you know, just in terms of getting out of the conflict --

MR. WYELS: I don't entirely disagree with you. The recusal to conflicts do actually handle that type of a problem if you hold the stock, and so you recuse on a case-by-case basis.

I'm afraid this isn't a great answer, but the best answer I can tell you is that this law derives directly from the Federal Clean Water Act. So, all we're doing in implementing the law --

SENATOR BOWEN: So we can just blame the feds.

MR. WYELS: That's why it's not a great answer, but that is, in fact, the truth.

SENATOR BOWEN: Actually my only other question is really for all three people, and perhaps you may be able to help us with it.

From what I can tell, the situation in the Elk River and Fresh Water Creek areas with the Pacific Lumber lawsuit has really gotten in the way of being able to do

anything to deal with known water quality issues.

Where do things stand? It's not a lawsuit at this point, I guess. It's a claim against the state; right?

MR. WYELS: There are lawsuits as well as the claim against the state, yes.

Where things stand right now is, this board attempted to convene a hearing earlier in 2005 to consider adopting waste discharge requirements for Pacific Lumber Company in those watersheds. And Pacific Lumber Company went to court and got a restraining order against the board from conducting the hearing. We fought that restraining order. We prevailed in the courts, and so now we're getting back on schedule for that hearing.

We were just recently served with the claim that Pacific Lumber had filed with the Victims Compensation Board, or I'm not sure what the full name is any more. We will be dealing with that. We expect there will be litigation as a result of that as well once they've exhausted that remedy.

We are doing everything that we can within our resources to uphold the board's ability to take the actions that it thinks are necessary.

SENATOR BOWEN: Is there an issue with the way the law is drafted that led to this filing of an action for a restraining order?

I've actually never heard of an action to restrain a hearing, but maybe I just have been looking in the wrong places and missed all of the many restraining orders.

MR. WYELS: I also am unfamiliar with this

practice, or was unfamiliar with this practice.

No, I don't think -- I think board is acting entirely within the law. There are -- there is the ability by people who think that an agency's going to violate the law to get into court and, on a very minimal showing, convince a judge that the status quo should prevail until the judge can look into it further. That's what happened here. The judge looked into it further and concluded that the board was entirely within its rights to hold the hearing.

No, I don't think that there was anything other than -- I'll keep my personal thoughts out of this -- I don't think there's any necessary legislative changes.

SENATOR BOWEN: Your personal thoughts are probably more interesting, but I'll refrain.

I'm not going to ask the board about the hearing, since I've had the radio on and have been listening to the Supreme Court nominations about matters that may come before the board.

So, I'm just going to assume that you will be holding a hearing, and that some decision will probably be made out of that hearing.

All right, I'm finished. Thank you.

CHAIRMAN PERATA: Senator Cedillo? Okay.

SENATOR ASHBURN: Mr. Chairman, I'm going to ask that we separate out Ms. Wasson from the other two for the purposes of the vote.

CHAIRMAN PERATA: All right. We'll have a motion to approve.

Oh, anybody here want to speak for or against?

MR. MASON: Good afternoon, Chairman Perata and Members of the Committee. Paul Mason with Sierra Club California.

I've been before the North Coast Board many times and have found Ms. Wasson's demeanor and professionalism exceptional. We strongly support her reappointment.

We don't have an official position on either Ms. Harris or Mr. Leonardi, but also look forward to working with them in the coming years.

Thank you.

CHAIRMAN PERATA: Anyone further?

We have a motion to approve Ms. Harris and Mr. Leonardi by Senator Cedillo.

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: And then on Chairman Wasson, same motion by Senator Cedillo, please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: No.

SECRETARY WEBB: Ashburn No. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Three to One.

CHAIRMAN PERATA: Three to one, you're all confirmed. Congratulations.

MS. WASSON: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:04 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

CALIFORNIA LEGISLATURE

MEMBERS
JIM BATTIN
VICE-CHAIR
ROY ASHBURN
DEBRA BOWEN
GILBERT CEDILLO

GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 6, 2005

Heidi J. Carpenter-Harris
P.O. Box 211
Salyer, CA 95563

Dear Ms. Carpenter-Harris:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the North Coast Regional Water Quality Control Board on January 11, 2006. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We would like to receive an updated Form 700, Statement of Economic Interest, by December 28, 2005. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Following are questions that we would like you to address in writing prior to the hearing. Please respond by December 28th, so committee members will have sufficient time to review the material before your confirmation hearing.

Questions:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board?

For at least five years your board has tried to deal with the issues of water quality in the Freshwater Creek and the Elk River areas of Humboldt County. Your executive officer has issued orders for technical reports on abatement actions for dischargers who harvest timber in the area. The board has issued cleanup abatement orders on these

same timber harvest operators; however, Freshwater Creek and Elk River residents still complain about the impairment of their water – both for agricultural and domestic uses. At the same time, Pacific Lumber Company has filed several law suits against your board and the State Water Resources Control Board challenging the board's right to request reports of waste discharge and monitoring.

2. Please describe the actions your board is taking to address the water quality issues in Freshwater Creek and Elk River. What is the timetable for resolving these issues?

The board's September 27, 2005, hearing, at which proposed waste discharge requirements for Freshwater Creek and the Elk River were to be discussed, was cancelled when a Superior Court in Humboldt County issued a temporary restraining order. This is the only known time a court has halted a regional board's hearing on issues before a board.

3. What is your board doing about the temporary restraining order?

4. Has your regional board requested legal assistance from the State Water Resources Control Board or the attorney general?

In the recent past there has been a backlog in the issuance of National Pollution Elimination System permits at your board.

5. What is the current status of this backlog?

A number of regional water quality control boards are behind schedule in developing and implementing TMDLs (Total Maximum Daily Load), which are required under the federal Clean Water Act to improve water quality by limiting the amount (i.e. "loading") of pollutants in water bodies.

6. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?

The federal Environmental Protection Agency believes that California spends more on its TMDLs than any other state.

7. What is your view of what drives up the costs of developing and implementing TMDLs in California?

8. Once a TMDL is adopted, what steps should the board take to ensure compliance?

A specific TMDL for the Scott River has been controversial. Environmental organizations allege that the proposed TMDL and its Action Plan does not contain sufficient information and assessment of current conditions. Among the most serious of the complaints is that the TMDL relies on a purely voluntary approach by landowners.

9. What is your view of this criticism? Do you believe that this TMDL describes enforceable actions that are in compliance with Section 12342 of the Water Code?

10. Do you believe that the TMDL Action Plan should provide options for landowners that require mandated prescriptions while also acknowledging the potential for individual voluntary plans that would attain water quality standards?

A number of smaller, mostly rural communities are having trouble improving their sewage systems. Under current law, if a sewage system is not in compliance, a mandatory minimum fine may be imposed.

11. How many community sewage systems are not in compliance with water quality laws?

12. Has the mandatory minimum fine requirement moved communities into compliance?

13. What can the board do when a community cannot afford to upgrade its sewage system?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

cc: Water Quality Control Board, North Coastal Region

DP:KW:dc

Heidi J.Carpenter-Harris
P.O. Box 211
Salyer, Ca 95563

Senate Rules Committee

Questions

1. The current priorities of the board include but are not limited to ,TMDL development and implementation, NPDES permit issuance and the issuance of WWDRs for the Elk and Freshwater.
My goal is to assist the NCRWQCB in achieving these goals by making prudent decisions while keeping in mind the goal of water quality and the communities that these decisions impact. I believe that the goals of both water quality and community viability can be met when we work together.

2. NCRWQCB staff along with PALCO, independent science panels, state agency, private landowners and special interest groups have worked countless hours on these two watersheds. Yes, problems remain and problems will probably always remain. There are many actions being taken to mention a few are a Clean up and Abatement Order (CAO) issued to clean-up drinking water problems, a CAO to address sediment discharge from sites associated with roads, monitoring programs to measure trends in water quality over time, review of timber harvest plans, and limitations on timber harvest to reduce erosion triggered by harvesting activities.
The current template for addressing the problems in these watersheds is the WWDR. The WWDR was released for public review in June of 2005, with adoption set for September 2005, PALCO obtained a Temporary Restraining Order to stop adoption. It is my understanding that PALCO as do others find the models that are being used do not properly represent the behavioral characteristics of these watersheds. Therefore, they wish to delay this adoption. We are currently waiting the date for the adoption meeting.

3. The restraining order has been vacated and the underlying lawsuit dismissed.

4. We have requested legal assistance from the SWRCB and the Attorney General's office in recent litigation.

5. We currently have a backlog of expired and outdated NPDES. The reissueance of these permits is the number one priority of our permitting staff. The new permits will fully incorporate the new toxic limits contained in the California Toxic Rules. By doing so, we will facilitate the SWRCB's initiative for electronic reporting of monitoring data. The boards 2006 schedule has been organized so that we can meet the demands of reissueance. We intend to have a significant reduction in this backlog by the end of fiscal year 2006.

6. Our board has adopted TMDL's on schedule and within budget. In 2005 we have adopted the TMDL's for Salmon River and the Scott River. In 2006 we intend to complete the Shasta, and by January of 2007 we intend to complete the mainstem of the Klamath River. By doing so we will meet our commitments to USEPA.
Although we have been able to meet our requirements, we have had to do so by redirecting our staff from other projects to adequately staff the TMDL work load.
We do not have the staff to adequately implement the nonpoint source TMDL's.
We need staff that can properly address the wide variety of land use issues in these watersheds such as, forestry, grazing, agriculture, and general erosion control. With this being said we do not have the staff to implement the Klamath TMDL in totality.

7. Developing the implementation plan drives the cost of the TMDL up.

8. The board should require progress reports on the goals and objections of the TMDL on a yearly bases. This would empower the process, with achievements being noted and modification being made when needed, so that the process is not bogged down by outdated requirements and/or data.

9. This TMDL is fully compliant with 12342 and the SWRCB's nonpoint source policy. While doing the investigation and analysis of this watershed it became apparent to staff that many volunteer groups including private landowners, special interest groups and local governments were already doing work to address non point source issues. These groups are familiar to the local people and have a high level of acceptance. It would be remise of our board to ignore these groups and move forward with a strictly regulatory approach. It is a much wiser choice to work closely with these groups to achieve our common goal. It is important to mention that these groups are not going on unchecked, the data they collect and projects done will be under review to insure progress is being made and that they are remaining on target with the TMDL. With implementation staffing being a weak link this is a resourceful way of achieving our goal.

10. I believe that a landowner when given the option to do it on their own or be mandated, 90% would like to do it in their own. (The # 1 problem whether they are mandated or it is done voluntarily is money.) The Action Plans should be a combination of both mandating when needed but room for those who have the fortitude to go at it on a voluntary basis.

11. We have 17 small rural communities struggling with surface discharges that are subject to MMP's. It is very difficult for these small communities to stay in compliance.

12. The MMP's have increased compliance rates. It must be noted that the MMP's represent a greater hardship on smaller rural communities than on larger urban areas. The urban areas can spread the fine over more rate payers with the smaller communities relying on fewer rate payers to bare the cost.

13. Encourage the community to bring it's wastewater connection fees and user charges up to a rate that can sustain compliance. Inform communities of Grant Assistance programs and State Revolving Fund programs they may be able to assist with the cost of the improvements.

Evening Star Holsteins
Dennis Leonardi Family
1901 Christensen Lane
Ferndale, Calif. 95536
707-725-6005
cows@humboldt1.com

December 26, 2005

Senate Rules Committee
State Capitol
Room 420
Sacramento, California 95814-4900

Honorable Don Perata
President Pro Tempore
California State Senate

Dear Sirs:

The following are my responses to the list of questions submitted to me prior to my confirmation hearing on January 11, 2006.

Question 1: Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board?

Response:

My goal on the Regional Water Board is to take an active role in promoting Best Management Practices and use my experience and practical knowledge of water application and conservation to help craft the most beneficial results for the varied tasks the Board is addressing.

My volunteer life is based around community service. This participation not only includes groups and local citizenry, but an extension to the land and surroundings which is home to me on the North Coast. Water is an essential part of this Region and my life, from my childhood experiences of the 1964 flood to moving irrigation pipe on our pastures to fixing our home pressure system. I am keenly aware of water's importance to all facets of life and am able to bring sensitivity and practical understanding and application to the board. I have experience with septic systems, know how important domestic wells and their protection are, and understand the need for irrigation as well as the benefits and possibilities of conservation as a meaningful tool in water use. The board

has TMDL development in progress, NPDES permits backlogged, and of course, the always controversial Elk and Freshwater WWDR adoption.

Addressing the Elk and Freshwater watersheds could involve an extensive review of history, including harvesting patterns, violations, complaints, and judicial actions. However interesting, that will do little to move us forward toward a point where there can be measurable relief for local residents and a clear outline for the parameters of timber harvest activities in the area. The activities surrounding this area may be unique to the state because they encompass such a precious and valuable resource. The advent of the Headwaters purchase, the Habit Conservation Plan that came with it, as well as the controversial ownership of adjacent lands puts this watershed in a very public arena, maybe like no other.

The North Coast Regional Board, my predecessors and this board currently, have moved to a watershed wide approach, where cumulative impact can be more clearly assessed and controlled, thus hopefully achieving quicker and more complete watershed recovery than the piecemeal approach of one THP at a time.

As far as relief for the residents, I have witnessed first hand and heard their accounts on a recent tour that I requested. The distress they are experiencing needs and deserves attention. The involvement of the Buckeye Conservancy to do a feasibility study of ways to get more immediate relief for the "locals" has been strongly encouraged of the discharger, and it was their commitment to fund the research. Putting it bluntly, a new era has to begin and it starts now with the WWDR. This broad sweeping approach is new and has met with resistance and some legal play in the process. However, some minor setbacks in time will not keep this sound process from getting to a reasonable and balanced formula for harvest rates and recovery steps in this sensitive watershed region.

Question 2: Please describe the actions your board is taking to address the water quality issues in Freshwater Creek and Elk River. What is the timetable for resolving these issues?

Response:

I have addressed a portion of the answer to this question in the extended answer above. Personally, I have done background reading to familiarize myself with the history, have been on a day-long tour to get a lay of the land, have listened to concerned landowners, civic groups, environmental concerns, and the discharger. I have participated and have been in attendance at several hearings where individual landowners, environmentalists and company experts provided background and their insights on the area. With all of this we arrive at a comprehensive Watershed Wide Waste Discharge Permit process.

Once again, I'll forgo the history of all the Cleanup and Abatement actions, note that winter operations were specifically addressed in 2002 and 2003, and thus providing a precursor to this most inclusive WWDR. The court actions of September 27, 2005, stalled adoption of this landmark process and have since been lifted. I fully expect our Executive

Officer, chair and vice-chair to set a schedule for its hearing and consequently its adoption in the very near future. Relief for local residents is still difficult and slow, and every effort to expedite help should be pursued; however, requiring drinking water to be delivered to those with domestic wells affected is a mitigation measure in place. Encouraging studies of possible restoration work downstream to relieve the sediment plug is also encouraging. This WWDR is a step up from the HCP, and I believe that we all can feel confident that we are headed in the right direction.

Question 3-4: What is your board doing abut the temporary restraining order? Has the North Coast Board requested legal assistance from the State Water Resourced Board?

Response:

The TRO has been lifted and the Regional Board was represented by counsel from the SWRCB and the AG's office.

Question 5: What is the current status of the backlog of NPDES permits?

Response:

There is a backlog of permits in the region. The board has requested an update for the number of permits and what is the commitment of staff to getting the backlog reduced. It has been followed up on several agenda occasions, and the EO and the staff have committed to reducing the backlog and getting the permits in compliance and fully consistent with state regulations. This item is a priority, and the board has been given a timeline for the processing of specific permits.

Question 6: Please describe the status of you board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?

Response:

There has been work done and approval given on several TMDLs in front of the board, and we have been updated on others in the development process. The TMDLs we are currently focusing on are largely related to sediment and temperature. Progress on the TMDL development seems to be hampered by limited staff, and as reported by our EO, redirection of existing staff from Basin Plan updates to the TMDL implementation plans is how the plans are continuing to be staffed. Our EO also reports that resources for non-point implementation are inadequate, forestry somewhat better staffed, but by and large there is simply not enough resources to implement the Klamath TMDL in a meaningful way. This is troubling to me, with this vast resource and the dire consequences that can result with a small variation in temperature, such as the Klamath fish kill.

Question 7: What is your view of what drives up the costs of developing and implementing TMDLs in California?

Response:

USEPA is not required to have a meaningful implementation plan, but we are in California. The development of a real implementation plan takes substantial field work and cooperation of stakeholders for both input and implementation planning. The great distances that must be traveled in our region also add to the cost, sometimes taking staff a full day just to get to an affected study area. We all realize this is not I-5. It is highways 36, 199, 299, 3, 96 and 101, as well as a whole series of mountain roads that feed into the system. To do the analysis with any sort of meaningful and measurable results, it takes additional time to get to the source and understand the hows and whys and hopefully that results in the fixes that will make a difference. If we do not get any fixes, we have failed everyone and everything that depends on us.

Question 8: Once a TMDL is adopted, what steps should the board take to ensure compliance?

Response:

The board must insist on regular updates on adopted plans and require benchmarks to be met toward compliance. These are being done on the current plans adopted. Should these benchmarks not be met, there needs to be investigation and reporting and appropriate action taken. Monitoring will be an essential part of any TMDL to accurately as possible measure progress or identify areas that need focus.

Question 9: The Scott River TMDL was controversial. Do I believe that this TMDL describes enforceable actions that are in compliance with Section 12342 of the Water Code?

Response:

We have been assured by our staff that we are in compliance with Section 12342 of the Water Code. The controversial nature of the TMDL in the region could stem from several venues. There has been much work done in recent years in the areas as a result of grant monies being secured by agencies in the area. Substantial voluntary work has taken place, and more is already underway addressing non-point source contribution of both sediment and temperature. This work has changed work habits and improved acceptance of Best Management Practice, as well as raised the pubic expectation of what is OK and what needs to be done in regards to stream improvement. The County is also involved as the maintenance of roads, bridges and culverts on miles of paved and gravel roads are a part of the plan, but can fall victim to budgetary concerns. It was staff's view, also embraced by the Regional Board, that we should build on these efforts and encourage people to do the right thing for water quality without having to force compliance. In doing so, the Board fully realizes it has a responsibility to make sure progress doesn't

stall out. The Board has directed the EO to do a comprehensive review annually on the progress of the voluntary efforts. The Board can then react accordingly in a timely fashion, should stronger compliance direction be needed, to make sure we fulfill our responsibilities.

Question 10: Do you believe that the TMDL Action Plan should provide options for the landowners that require mandated prescriptions while also acknowledging the potential for individual voluntary plans that would attain water quality standards?

Response:

Options usually encourage people and the prescriptive measures sometimes meet with resistance. To maximize success, compliance measures need to incorporate a combination of prescriptive and voluntary measures, and use monitoring as a meaningful gauge to establish progress toward compliance.

Question 11: How many community sewage systems are not in compliance with waste quality laws?

Response:

Our EO reports to us that there are 17 small communities that are subject to MMP's and struggle with surface water discharges. All are under enforcement orders actions.

Question 12: Has the mandatory minimum fine requirement moved communities into compliance?

Response:

We have received reports that indicate that MMP do improve compliance. However, most of these small communities are stretched thin budget-wise, and with few rate payers the cost of the fine can be disproportionably high and further make their compliance progress difficult.

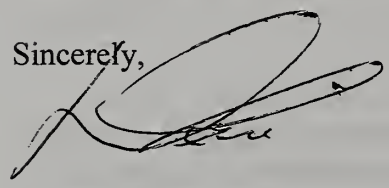
Question 13: What can the board do when a community cannot afford to upgrade its sewage system?

Response:

The Board can assist and support their application for the Small Community Grant Assistance and State Revolving Fund programs. In addition, the board can create an awareness of the need for realistic connection and user fees to sustain an effective treatment option. Enforcement Orders can also be issued, thus raising a discharger's eligibility for grants and other assistance.

I respectfully thank you for your time and consideration in this approval process.

Sincerely,



Dennis Leonardi

Beverly Wasson
Partner Wasson Vineyard
Alexander Valley
Sonoma County

January 3, 2006
Senate Rules Committee
Don Perata
Chairman

Questions and my answers:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board?

Answer:

My over-riding goal for my third term is to implement policies that move the agency to accomplish:

a. ***TMDL development and implementation of our listed 303d streams and keep to the schedule we have with Federal EPA***
b. ***Expedite and formalize changes to the basin plan that reflect the updated data obtained from the TMDL process***
c. ***Issue NPDES permits and reduce our backlog***
d. ***Treat our enforcement cases with an expedited firm, fair and even handed process for our region and through out our state***
e. ***To issue WWDRs for Elk and Freshwater and to move forward and complete the TMDLs for these watersheds.***

2. Please describe the actions your Board is taking to address the water quality issues in Freshwater Creek and Elk River. What is the timetable for resolving these issues?

Answer:

Presently I'm the senior Board member, having been appointed to the Board in May of 1999. As a new Board member then, I was surprised to learn that our agency was omitted from the HCP as a signatory and that water quality issues were to be addressed at a later time on a Timber Harvest Plan (THP) by THP basis. In early 2000 I attended a public fieldtrip and workshop on the issues in the Elk and Freshwater Watersheds, and saw the sediment impacts first hand, very real and massive. After studying the facts provided by Palco, downstream residents, other state and federal agencies, and staff reports dealing with these impacts, it was apparent that the increase in land disturbance caused the massive "mass wasting" in the late 90's that increased the sediment load and increased the frequency of flood events.

As a Board, we asked our EO at the time, to direct staff to continue the efforts of clean up and to decrease the amount of land disturbances in the 5 watersheds so recovery could commence. The Board was set to hear the issue in September of 2000 in Arcata, however the hearing never took place. The Board chair at the time, vacated the hearing (I was not a part of this decision). Then due to a number of months of lacking a quorum we did not re-address this issue until late 2002.

In December of 2003 the Board adopted motions directing staff to develop watershed-wide WDRs to prevent further damage and speed recovery in the watersheds. Staff was encouraged to continue to issue and administer Clean up orders for past damage. Early this year the Board will hold hearings that will hopefully lead to the adoption of watershed-wide WDRs for Palco, and Green Diamond.

3. What is your Board doing about the temporary restraining order?

Answer:

The restraining order has been vacated and Palco has requested dismissal of the underlying lawsuit.

4. Has your Regional Board requested legal assistance from the SWRCB or the attorney general?

Answer:

The Attorney General's office and the SWRCB provided us with legal support, at our staff attorney's request. I met with the SWRCB in Sacramento in September and was briefed on our strategies.

5. What is the current status of the NPDES backlog in your region?

Answer:
We have a backlog of expired and outdated NPDES permits. Our EO has made the reissuance of these permits the number one priority of our permitting staff. Progress has been slowed by the 30% staffing reduction our Board has experienced in the past four years. Also the on going Palco issues have taken a majority of not only staff, but board time as well! The new permits will include more stringent requirements and will result in improved water quality protection. However, since many of our communities are poor, achieving the needed upgrades will be difficult.

I anticipate that the backlog will be significantly reduced by June of this year.

6. Please describe the status of your Board's TMDL process. Does your Board have adequate resources to develop and implement the required TMDLs?

Answer:
This year the Board adopted two TMDLs, the Salmon and Scott Rivers. Both of these adoptions were done on schedule. This meets our state work plan commitments and commitments to USEPA. Staff is currently working on TMDLs for the Shasta and the mainstem of the Klamath. I anticipate that these adoptions will also be on time, with the possible exception of the Klamath, as that TMDL will draw national interest and controversy.

There are 18 adopted TMDLs in our Region, and we have three people to work on implementing them. It is an impossible job. We have chosen to focus on the Garcia River where our time and attention appears to be paying off with improved water quality. The Board directed staff to develop strategies to implement the technical TMDLs that were previously adopted by USEPA. Staff is developing annual workplans for the Salmon and Scott Rivers, but our presence will be extremely limited due to inadequate staff and not having satellite offices for the far corners of our region.

7. What is your view of what drives up the costs of developing and implementing TMDLs in California?

Answer:
California's TMDLs cost more because they require real and substantial implementation plans. Developing the science that documents and quantifies the reasons for impairment is the easy part of the job. Making changes on the ground is tough. All the TMDLs in our region require that

landowners change their current practices of land management. Making these changes is expensive for landowners and all taxpayers.

USEPA is not required to develop an implementation plan, nor are most states. I believe that adopting TMDLs without requiring implementation would be just an empty planning exercise. So while our costs may be higher. I believe we can use this program to improve water quality, as seen on the Garcia River. However our program will be a sham if there aren't resources to follow through on the adopted TMDLs.

8. Once a TMDL is adopted, what steps should the Board take to ensure compliance?

Answer:
The Board is requiring annual updates from staff on progress and barriers to progress in each watershed. The Board has also directed staff to develop workplans for each watershed with a TMDL. Staff will present the Board with a plan for the best use of the three people we have to implement our adopted TMDLs.

9. The TMDL for the Scott River has been controversial. Among the complaints is that the TMDL relies on a purely voluntary approach by landowners. What is your view of this criticism? Do you believe that this TMDL describes enforceable actions that are in compliance with Section 12342 of the Water Code?

Answer:
I want to be clear that the Board and its attorney believe the Scott TMDL is fully compliant with 12342. The plan requires compliance with Basin Plan standards within 40 years, and the Board directed the staff to use all available tools, including permitting and enforcement as necessary to achieve that goal.

Why so long a period to achieve compliance? This TMDL is for temperature and sediment. It is the first temperature TMDL to have an implementation plan, and the major way we have for cooling streams is to plant trees and let them grow. It will take up to 40 years for trees planted today to reach their full maturity and effectively shade the streams.

In developing the implementation plan we became aware that due in part to the availability of grant funds, quite a bit of voluntary work was already underway or being considered. This work is vital, and is helping to generate public acceptance for sediment and temperature controls. In my view, it seems efficient and prudent to build upon these efforts.

The implementation plan starts with encouragement of these new locally driven changes in practices. However, the staff is directed to evaluate the effectiveness of these practices annually and report back to the Board on implementation. If the dates in the implementation plan are missed, then the Board will consider taking appropriate permitting or enforcement actions.

Staff is also directed to develop a monitoring plan for the basin in one year.

Being a member of the farming community, I do understand that the landowners fear that the implementation plans will put them out of business. We do not want fear to keep landowners from improving their properties to meet the water quality standards. It takes money and time to put improvements in place. We want the landowners to come into compliance on a voluntary basis, but we will also enforce water quality standards as we become aware of problems on the ground. Again we do not have the staff to do all the work that needs to be done, we have to have the stakeholders support and their efforts to improve water quality.

10. Do you believe that the TMDL Action Plan should provide options for landowners that require mandated prescriptions while also acknowledging the potential for individual voluntary plans that would attain water quality standards?

Answer:
I believe implementation plans will eventually include both, and a robust monitoring program to provide for adaptive management. The implementation plans that we are developing now are just a first step. They will be only a small step unless there is adequate funding for monitoring and evaluating the success of the measures that are being implemented.

11. How many community sewage systems are not in compliance with water quality laws?

Answer:
Our Region has 17 small rural communities with surface water dischargers that are subject to MMPs. All 17 have had compliance issues, and struggle to stay in compliance. All but one are currently under enforcement order to come into compliance.

12. Has the mandatory minimum fine requirement moved communities into compliance?

Answer:
During my time on the Board I have seen the requirements for MMPs push communities to take compliance more seriously.

13. What can the Board do when a community cannot afford to upgrade its sewage system?

Answer:
During my tenure, we have faced this issue often. The Board asks the community to bring its wastewater connection fees and user charges up to par with what other communities charge its users.

The Board adopts enforcement orders with time schedules for completion of improvements. Time schedules establish milestones for communities and the Board to measure and evaluate progress. Enforcement orders and time schedules can have penalties attached to them as an incentive to comply. Enforcement orders also elevate communities on eligibility lists for grants and loans.

Staff can assist communities with Small Community Grant Assistance and State Revolving Fund programs and funding programs administered by other state and federal agencies.

Sincerely,

Beverly Wasson,
Chair, North Coast Water Board

525-R

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STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 18, 2006

1:33 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR GILBERT CEDILLO

MEMBER ABSENT

SENATOR DEBRA BOWEN

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

TAM MINH DODUC, Member
Water Resources Control Board

SENATOR MARTHA ESCUTIA

LINDA SHEEHAN, Executive Director
California Coastkeeper Alliance

ANN NOTTHOFF, California Advocacy Director
Natural Resources Defense Council

GERALD D. SECUNDY, Member
Water Resources Control Board

SENATOR DENISE MORENO DUCHENY

SAGE SWEETWOOD, President
Planning and Conservation League

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We are a quorum.

Senator Escutia, what brings you here?

SENATOR ESCUTIA: I'm going to introduce.

CHAIRMAN PERATA: Wonderful. Come on up.

SENATOR ESCUTIA: I wasn't sure what order we were in the agenda.

Thank you very much, Mr. Chairman and Members.

I bring to your attention Ms. Tam Doduc. Like many immigrants before her, she has struggled to be quite successful, and I frankly don't think you'll find anybody more better equipped for this position as Chair of the State Water Resources Control Board.

She comes before you as a product of a long journey, not only her journey from Vietnam to this country, you know, but also she's a product of 16 years of public service at Cal EPA, the Air Board, and the Water Board. And it's a journey that has been marked by one issue, frankly, and that is her unwavering dedication to preserving and improving California's environment and protecting the health of our citizens, especially those who are most vulnerable or who suffer the most disproportionate impact. It was indeed her work on environmental justice issues and children's environmental health that brought her to my attention. She was charged with the responsibility of implementing my Children's Environmental Health bill in the late 1990s, while I was still in the Assembly. And Tam worked on those issues while she was Deputy

Secretary of Cal EPA.

She directed the agency's environmental justice activities, and that meant working with many stakeholders and many communities in many of these areas that many times don't have an adequate advocate for them in Sacramento. She worked to develop the Cal EPA's environmental justice strategy in the areas of cumulative impact, precautionary approach, and public participation.

And it was also under her leadership that Cal EPA initiated several pilot projects to reduce children's environmental health risks from pollutants in the air, water, and soil in many of these, you know, disadvantaged communities.

I think it is that experience that is needed today in the State Water Board. With her as Chair, I can think, frankly, of no greater visionary to fill that position.

So, I present to you, it's my honor to present to you Tam Doduc for consideration and urge your confirmation of her as Chair of the State Water Resources Control Board.

CHAIRMAN PERATA: Thank you, Senator.

Welcome to you.

MS. DODUC: Thank you, sir. Good afternoon to you, Chairman Perata and Members of the Committee. And thank you for giving me the opportunity to appear before you today.

I also want to thank the Senator for her introductory remarks.

Before we begin, I'd like to introduce some very important people to me. Here today are my mother Ninh, my aunts Tuat, Kim and Ha.

Senators, all that I am and hope to be I owe in large part to these four remarkable women. They've taught me by example to live life with conviction and with honor, and it is with those principles in mind that I am here today seeking your confirmation.

I am honored and I'm humbled by the responsibilities of being Chair of the State Water Resources Control Board. I know that it is more than a title. It's more than a position, that it's a unique obligation to serve the people of California. It's a rare opportunity to lead the Water Boards in accomplishing our water rights and water quality mission.

Senators, I take that charge very seriously. Water is California's most precious resource, and we face significant challenges in protecting and allocating this precious resource.

During my tenure on the Board, hopefully, I hope to accomplish many objectives in water quality. However, my paramount goal as Chair of the State Water Board is to ensure a performance-based organization that delivers results. And by that I don't mean just the mechanics of issuing permits, adopting plans and policies, and approving grants, but actually demonstrating actual measurable improvements in water quality and beneficial uses.

This is a tremendous job. I cannot do it alone. I will look to the other members of the State Water Board and the 81 members of our regional water boards for assistance.

I also recognize that the water boards can't do

this alone either. We need to work with our colleagues at the state, local, federal levels. We need to work and listen and hear from our impassioned stakeholders. And we need to seek guidance from the collective wisdom of the Legislature.

I promise you that I will never forget --

CHAIRMAN PERATA: I want to write that down.

[Laughter.]

MS. DODUC: I actually do mean that.

I promise you that I will never forget how vital water is to the well-being and future of the state environmentally and economically, and I will discharge my duties and face the challenges ahead with conviction and with honor, otherwise I'd be in trouble with my mother.

[Laughter.]

CHAIRMAN PERATA: Well put. Thank you.

It's really a privilege to have someone with your background and dedication to chair what has to be one of the most important boards that we have in the state, and we have a lot of them.

I was interested to note that there's a letter here from Kim Roberts, who lives in my district, actually lives in my home town.

MS. DODUC: She's right there.

CHAIRMAN PERATA: She was talking a little bit about your background, having come from Vietnam when you were eight?

MS. DODUC: When I was eight, yes.

CHAIRMAN PERATA: And you went through six months

through several refugee camps, and you were the primary caretaker for a one-year-old first cousin, Robert, who was lost from his parents. Pretty remarkable; pretty remarkable.

MS. DODUC: Thank you, sir.

CHAIRMAN PERATA: We hear a lot about people who have struggled through that. It's really nice to see one, someone who's come to their adopted country and done so well, give so much back.

I have more than a passing interest in water quality. I'm very big on drinking water. I like that a lot. In fact, when skiers are happy, I'm happy because it means I can take a long shower. So, I have a different orientation. I come from humble beginnings, so, you know, can't ski.

But what I am concerned about is recycling urban lands, lands that have been in the past part of our manufacturing industry, which is pretty much gone, or other urban activities that are no longer economically productive.

And as you, I'm sure, know as well as anyone, a big difficulty is being able to take care of the contaminants, the brownfield issues. And we allocated I think 10 million last year for this purpose.

I'd like to know what's going on, and how you see it, and what else do we need to do?

MS. DODUC: Thank you, Senator. We really appreciate the allocation last year. We shared -- distributed the allocation to the regional water boards where I feel the greatest needs are. And the regional water boards, working with the Department of Toxic Substances Control and Cal EPA last year

developed and signed a Memorandum of Agreement so that we could better coordinate our activities, provide more consistent messaging to the various stakeholders involved, ensure that public health and water quality issues are addressed, that we don't duplicate, overlap, repeat our various activities on a certain site.

There is always room for improvement. We're still working out those relationships with DTSC. I look forward to working with the newly appointed Director, Maureen Gorsen, to further streamline our efforts and make sure that the sites are cleaned up as expeditiously as possible, keeping in mind still that we need to protect public health and water quality.

CHAIRMAN PERATA: You mentioned DTSC, and most places, this is just a statement of fact, they seem to pop up as the most difficult or troublesome agency to work with, at least in my area. I have no personal contact, but I know the initials really well, DTSC.

MS. DODUC: Department of --

CHAIRMAN PERATA: So, if you can help expedite that.

It's not ironic, but Senator Escutia's spent more time in the brownfields area than I have, and it's a common denominator throughout the State of California for older urban communities.

So, you know, I'd appreciate periodically, if there are things that need to be done and we're not doing enough, in spite of the fact that you want to come here and ask for advice from the Legislature, which I appreciate -- you'll

probably see more in a week than will come to my attention in a career -- if there are things that we can be doing to bring back land productively, certainly not at any public health risk, but it seems to me there's a lot of times with various agencies that are colliding with each other that have multiple jurisdiction. You touched on that. If you can streamline or thin that out a little bit, where more of the money is going into remediation and less into bureaucracy, it'd be fabulous.

We have to accept responsibilities for the legal stuff that attends that, but so much of it seems to be just the responsiveness of agencies to those who are trying to bring these lands back in productivity.

With that, thank you for doing what you're doing. You are a wonderful appointee. You've been there since March?

MS. DODUC: Since March, yes, and been Chair since September.

CHAIRMAN PERATA: No gray hair, nothing. Are you working hard enough?

MS. DODUC: Lots of gray hair, sir. Maybe I shouldn't have admitted that.

CHAIRMAN PERATA: I'll just call your mom.

[Laughter.]

MS. DODUC: Oh, dear.

CHAIRMAN PERATA: Any other questions, comments from the board?

SENATOR BATTIN: Move.

CHAIRMAN PERATA: We have a motion to approve.

Those who would like to come up and say anything nice briefly. Actually, if you're not going to say anything nice, that's going to be brief.

MS. DODUC: Senator, Ms. Linda Sheehan from Coastkeeper Alliance.

MS. SHEEHAN: Thank you Chair Perata and Members of the Committee. I'm Linda Sheehan with the California Coastkeeper Alliance, and we represent water keeper groups throughout the state.

I'm very honored to support Ms. Doduc's confirmation today. I've been extremely impressed with her work at the State Water Board, particularly as Chair.

I've been appearing before the State Water Board for over a decade, and I can say that Ms. Doduc brings a unique blend of experience, particularly with respect to environmental justice, and credentials to the Board that I haven't seen in a long time.

Couple things that I just wanted to highlight quickly is with respect to her experience in cross media. The first ever joint workshop with the Air Board on the impacts of air pollution on water quality is coming up soon. That is long over due.

With respect to water quality monitoring, it's a baseline effort that's been ignored for many years, and Ms. Doduc's been extremely supportive of reviews, scientific review, of the state's water monitoring program and much needed enhancements in the Governor's budget, which we're very pleased to see this year.

Finally with respect to water quality enforcement, Ms. Doduc has taken the initiative to make that process far more transparent and fair to the people who are complying with the law, and making sure that the people who don't comply aren't rewarded for that behavior.

So again, I'm extremely honored to support her confirmation. She is going to be a wonderful addition to the State Water Board.

CHAIRMAN PERATA: I thought cross media was cable versus satellite.

MS. SHEEHAN: It's just media that don't get along.

CHAIRMAN PERATA: Expanding my horizons. This is great.

You can cue up if you'd like.

MS. DODUC: Next, Ms. Annie Notthoff of NRDC.

MS. NOTTHOFF: I'm Ann Notthoff with the Natural Resources Defense Council.

We are pleased to support confirmation of Tam Doduc to the State Water Board. She brings a great cross media -- you already talked about cross media -- but her experience with all the different agencies, as you just pointed out in your questions, is really valuable because the Water Board can't protect water alone, actually. We've got a lot of other agencies that need to be involved in that, and being able to work together is always a big challenge.

Since joining the Board, she's already taken an active role in decisions that affect San Francisco Bay, and the

North Coast forests, among other areas, and we're pleased to support her confirmation.

Thank you.

CHAIRMAN PERATA: Thank you.

Anybody in opposition? Seeing none, you won't have to say a word. We're just going to move right ahead.

Call the roll, please.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

MS. DODUC: Thank you, sir.

CHAIRMAN PERATA: We have one more, Mr. Gerald Secundy.

Nice to see you, Senator Ducheny.

SENATOR DUCHENY: Good afternoon. Thank you very much, Mr. Chairman and Members.

It's my pleasure to introduce to you Mr. Jerry Secundy, the Vice President, I believe, of the State Water Resources Control Board, appointed earlier, last year, to fill the public member slot.

He has brought to the Board an impressive

background and expertise in addressing environmental issues and a balance, if you will, of both experience in the private sector, having worked for ARCO, as an environmental attorney with the U.S. Department of Justice prior to that, and subsequently as an Executive Director of the Audubon. So, he's worked both in the nonprofit sector in environmental organizations, the California Council for Environmental and Economic Balance, California Environmental Dialogue, has been a member of the Sierra Club.

An interesting footnote in the histories, as you were mentioning with the prior candidate, is also that he served in the Peace Corps in Peru. He's one of our members of the board who now speaks Spanish, now that Pete Silva's no longer there, and has taken some interest in our border issues in Calexico and Tijuana River valleys, and some of the huge water quality issues that we face, particularly in the southern border region.

So, it is with pleasure that we suggest that this Committee confirm. He has been doing the work now for sometime, and I think has shown that thoughtful approach that I believe many of the letters indicate, both having experience in the regulated community environment and in the nonprofit world.

CHAIRMAN PERATA: Thank you, Senator.

Mr. Secundy, please.

MR. SECUNDY: Thank you very much, Senator, for those very kind remarks.

Good afternoon, Chairman Perata and Members of the Senate Rules Committee. It really is an honor and a

privilege to appear before you and to have the opportunity to serve as a member of the State Water Resources Control Board.

I too would first like to introduce my family to you. My wife, the lovely Donna; my eldest son Daniel.

CHAIRMAN PERATA: Also lovely.

MR. SECUNDY: Also lovely. And even lovelier, my younger son Andrew.

CHAIRMAN PERATA: They often leave that out.

MR. SECUNDY: I want to begin by giving you a bit of my background so that you will understand why I bring a somewhat unique perspective to the Water Board.

As a child, I spent the summers on the shore of the Chesapeake Bay and watched the gradual decline of the bird, fish and crab population. At the time I did not understand why it was happening, but it left an indelible mark.

After college and law school, I entered the United States Peace Corps and for over two years as a volunteer in Cuzco, Peru, directing a center for disadvantaged youth and also came to love the vast, untouched vistas of the Andes Mountains.

From the Peace Corps I joined the Department of Justice in the Land and Natural Resource Division and was there at the time of the infamous Unocal oil spill off the coast of Santa Barbara. I was very impressed by the countless Californians who volunteered to clean the beaches and to do what they could to save the many birds that were endangered. The pictures of the spill were a shock to me and also a wake-up call to the oil industry, and most especially Atlantic Richfield,

ARCO.

ARCO was a newly formed company at the time that combined Atlantic Refining on the east coast and Richfield Oil on the west coast, but most importantly, it was led by a new team of executives with a different attitude towards the environment. It recruited a number of attorneys, myself included, from the Department of Justice in order to work from within the company to better protect the environment.

My first assignment was to persuade the refinery manager in East Chicago, Indiana, to install a secondary waste treatment facility. At the time there was no Clean Water Act, and the only tool that the federal government had to utilize was a violation of the 1899 Rivers and Harbors Act. And we used to say that it was simply, pollution was an impediment to navigation. We have all come a long way since then.

In my career with ARCO, I held a number of executive positions, but at the end I returned to my roots by becoming Vice President of Environmental Health and Safety and and External Affairs for the Marketing and Refining Division.

After an early retirement from ARCO, I started my own environmental consulting business. It was also at this time that I became Chairman of the California Council on Environmental and Economic Balance, an organization that was founded by the late Governor Pat Brown, and which brings business, labor, and public figures together to deal with environmental challenges.

Next, I made what some would call an abrupt shift in career by becoming Executive Director of Audubon California.

Given my experience in the environmental arena, I feel that it was more like a natural progression as opposed to an abrupt shift. At Audubon, I learned first-hand how industry was perceived and was able to correct some misunderstandings and form partnerships with a number of companies to help Audubon create Nature Centers in urban settings.

I was also able to help facilitate the acquisition of the Cargill Salt Flats in the Bay Area so that they could be restored and preserved. The Cargill sale stands as a great example of state, federal, private cooperation that leveraged state resources and will benefit Californians for generations to come. I'm proud that I was part of that process. Audubon was also a key player in the Quantification Settlement Agreement that has breathed new life into the Salton Sea.

From Audubon, my next step was as Executive Director of the California Environmental Dialogue, which brings together industrial and environmental groups to work on some of the most pressing environmental problems facing California, including air, traffic, growth, and water. It was from this organization that I was invited by the administration to join the State Water Board.

So, as you can see from this very brief biography, I have worked on both the business as well as the environmental side. I understand the problems, perspectives, and approaches that each brings to the table. I would like to think that I have been successful in many instances in bringing the parties to a joint and workable resolution.

Water is our most precious resource. It is not unlimited and must be treasured and used wisely. We must be smarter in capturing our stormwater and recharging our aquifers, and I plan to make certain that the Water Board is a leader in these efforts and the other items that I see as priorities.

We must change many ingrained habits in terms of our waste disposal. We must learn to utilize native plants and recognize that in many of our counties rolling, green lawns are not appropriate. Whether we wish to recognize it or not, our climate is changing, and we must change our habits along with it.

And above all, we must educate the next generation so that they, too, will treat water as the important substance that it is.

Thank you very much.

CHAIRMAN PERATA: Wow, a lawyer that can write. You don't see that too often.

Sorry, Senator.

MR. SECUNDY: I don't know what to say to that.

CHAIRMAN PERATA: I used to teach English.

Your biography pretty much sums up how lucky we are to have somebody with your background and experience doing that job. The two of you together ought to be able to lift the place right off its foundation. That's great to see.

I'm interested in two things to ask. First of all, you remember MTBE?

MR. SECUNDY: I certainly do, vividly.

CHAIRMAN PERATA: And that was a mess all the way

around.

Did you ever think about what happened, and how it could have been avoided?

MR. SECUNDY: I think -- well, I don't want to cast blame in any particular direction.

CHAIRMAN PERATA: That's our job.

MR. SECUNDY: Let's just say that I think we could all have been a lot smarter at the time.

I think what the industry was looking for with MTBE was basically an aromatic that could be added to gasoline that would replace some of the more dangerous substances, such as benzene, for example, which it did.

No one really stopped to think about what would happen in terms of cross media, in terms of what it would do with water.

MTBE really wasn't the problem. What was the problem were the leaking underground storage tanks. And if you had asked the industry folks at that time how many tanks are leaking, they would have said, "Oh, maybe one, maybe two percent." It was probably more like forty or fifty percent.

We were certainly -- "we" the industry -- were ignorant of that. In that sense, MTBE frankly provided a wonderful mechanism to recognize the danger to the aquifers by these leaking underground storage tanks. And, of course, we've come a long way since then. Over 30,000 of them have been closed down and cleaned up at this point.

MTBE was put in with cooperation with the ARB. That was a joint partnership. Everyone thought it was the right

thing to do. In retrospect, it absolutely was the wrong thing to do, no question about that.

CHAIRMAN PERATA: Thank you, and thank you for not using "wake-up call." You said "mechanism;" that's nice.

[Laughter.]

CHAIRMAN PERATA: You've actually been on many sides of the fence. You've done a lot of different jobs. I think I would agree with you; it sounded more like a progression than a detour.

Having been on both sides, how do you evaluate the potential for better interrelationships? I won't say cross media.

MR. SECUNDY: I think the opportunity is just enormous. When it comes to -- and there's some things, because they're currently before us that I can't go into detail -- but I'll simply use an example, and that's stormwater.

I think we all know that the environmental community is very interested in looking at numeric limits for stormwater. The discharge community is very leery of that. And yet, both sides, if you like, recognize that the current program is not working. There's simply too much pollution in stormwater. It's not captured, and there's some very innovative things we can do if we work in partnership.

One of the things we can do is eliminate some of the stormwater. Instead of paving over so much of California with impermeable surfaces, we can use permeable surfaces. We can use swales. We can use lots of ground cover that would capture a great deal of that stormwater, recharge the aquifers,

and therefore provide more water that we would not have to pump over the Tehachapis, and decrease the amount of stormwater that would be going into our oceans. So, that's just one example of something we can do.

I have talked to both sides. They are more than willing to sit down and work with each other.

It's very difficult sometimes in a public forum because there's so much posturing that goes on, and everybody gets entrenched, if you like. But if, indeed, there can be more not-so-public meetings, quite frankly, where some of the constituents can get together and hammer out ideas, and then present them in public forums, I think we can make some progress.

CHAIRMAN PERATA: Members, any questions, comments?

I'll make sure that your comment about not everyone should have rolling lawns gets back to Pasadena.

[Laughter.]

MR. SECUNDY: Well, I agree with that comment, I assure you. The one thing Pasadena is doing, to give one plug to Pasadena, if you want to look at a city that's doing a great deal of infill, it's Pasadena.

CHAIRMAN PERATA: That's true.

MR. SECUNDY: It's really building up right now, and that's what we need to do.

CHAIRMAN PERATA: Well noted.

SENATOR CEDILLO: It's the adjacent community to my district.

CHAIRMAN PERATA: Oh, yes. He represents the real growth area of downtown L.A.

Would anybody in the audience like to come up and say nice things.

MR. SECUNDY: I think Sage Sweetwood, who is the President Emeritus of the Planning and Conservation League, I hope would like to come up.

CHAIRMAN PERATA: Geez you guys are organized.

I guess you have to now.

MR. SWEETWOOD: I guess so.

CHAIRMAN PERATA: Welcome.

MR. SWEETWOOD: Senator Perata, Senators.

CHAIRMAN PERATA: Give us your name and rank for the record.

MR. SWEETWOOD: I'm Sage Sweetwood. I am past President of Planning and Conservation League, been a board member of Planning and Conservation League for over 20 years. Previously mayor, coastal commissioner, a whole host of those kinds --

CHAIRMAN PERATA: What was your name before you took a stage name?

[Laughter.]

MR. SWEETWOOD: Let's not get into that story.

In the last decade or so as President of Planning and Conservation League, I had an opportunity to meet and work with Jerry Secundy. And he served on our sister organization, Planning and Conservation League Foundation, for a number of those years, and that's how we first got together. Then more

recently, I participated with Jerry in the California Environmental Dialogue, the CEEB-sponsored organization that attempts to get various sides of an issue to sit down, take a deep breath, relax, and try and come up with constructive solutions on things that everybody can agree that can be done now, rather than the polarized gridlock that we so often find ourselves in.

And with that experience, I and PCL wholeheartedly endorse Jerry as a person who we hope can bring some progress to an area that I think all of you probably are aware, you know, water policy, water politics is one of the deeper quagmires in California.

And certainly from my perspective, from PCL's perspective, we, I think, are at a real turning point in water policy right now. Clearly supply exceeds demand in terms of how we currently view supply and demand. We have all of the traditional point source toxic problems. The nonpoint source toxic problems, of course, becoming more and more problematic as the population grows, as our urban footprint expands, as our agricultural footprint expands.

And, of course, we have climate change staring us in the face in terms of adding some more uncertainty to the problems that we face.

And it's our belief that all of state government, not just the Water Quality Control Board, need to really begin to look at the problems we face on a much more big picture, systematic way. Jerry mentioned a couple of things.

You know, traditionally we've looked at

stormwater as a liability, something that we have to get rid of; how do we channel it out to the ocean. Instead, I think, we need to start looking at things like stormwater as a resource to be used, that is a water supply element, that's something to recharge aquifers. It's that kind -- it's just one small example of a whole variety of issues that need to be re-thought.

Too many of the folks in the water community, I think, are looking backwards and trying to chart our course in the future by looking at what's worked in the past. I think that Jerry is well positioned to get people to begin looking forward. And I've seen, quite frankly, already a couple of examples where he has been able to begin to get the business community to start looking at these issues with a new set of eyes.

So, from that perspective, we heartily endorse Jerry, and we look for great things, and let's change the world.

CHAIRMAN PERATA: Thank you.

MR. SECUNDY: I did not ask anyone else.

CHAIRMAN PERATA: Good.

Anyone here in opposition? Seeing none, we have a motion to confirm from Senator Battin.

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

MR. SECUNDY: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:03 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of January, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

State Water Resources Control Board

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Arnold Schwarzenegger
Governor

January 5, 2006

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Ms. Sabelhaus:

Thank you for the opportunity to provide Senator Perata and his colleagues on the Senate Rules Committee with some of my goals as chair of the State Water Resources Control Board (State Water Board), as well as answer the Senator's specific questions.

I am honored to have the privilege of serving on the State Water Board, and humbled by the great responsibility and trust that service entails. Since 1967, the State Water Board has striven to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use. This is a tremendous charge, and no matter how hard we try and how well we do, there is always room for improvement. I am committed to working with my colleagues on the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) to improve the health of California's waters and their beneficial uses.

Following are responses to the questions asked in Senator Perata's letter of December 16, 2005:

1. General

Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Water Resources Control Board? What are the most pressing problems and challenges you see for the board in the coming years? How do you propose to address them as chair of the board?

I hope to accomplish many objectives during my tenure on the State Water Board – objectives such as: implementing a robust water monitoring and research program; ensuring enforcement actions are timely, fair, consistent and firm; addressing gaps that impede environmental justice; enhancing our scientific and research resources; reducing water pollution from aerial and non-point sources; ensuring equitable

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allocation and use of water resources; and building a strong partnership between the State and Regional Water Boards. However, my paramount goal as chair of the State Water Board is to ensure a performance-based organization that delivers results – not only in doing our job, such as adopting policies, issuing permits, and approving grants efficiently and timely – but in demonstrating actual measurable improvements in compliance, water quality, and beneficial uses.

To begin, I am championing a State Water Board reorganization to create an Office of Research, Planning and Performance. This office will develop, coordinate and support a results-based management and accountability system that aligns research, planning, policies, processes, resources, and performance measures to promote: 1) internal efficiency and effectiveness; 2) management, fiscal and environmental results; and 3) transparency and accountability by reporting to internal and external stakeholders.

The Office of Research, Planning and Performance will prepare by April 2006 a workplan for the Water Boards to accomplish the following, with Legislative guidance and public participation:

- **Set Clear Priorities:** We will never have enough resources and time; so the Water Boards must identify and commit to addressing our most important water quality and water rights problems. Plan a course of action to achieve the greatest outcomes for these priorities. Ensure that resources are allocated and used in the most effective and efficient manner.
- **Develop Measurable Targets:** Identify measurable targets and measurement systems for priority problems; these quantifiable targets must demonstrate improvement in water quality, regulatory compliance, staff efficiency, and program effectiveness. Integrate these measures and systems into everyday activities at the Water Boards.
- **Ensure Accountability:** Evaluate and report progress to stakeholders, the Legislature and the public. Ensure that information technology systems collect the right data and produce readily understandable and available reports. Make data and information available on the Internet.

Accomplishing the above will require a collaboration of all the Water Boards. It will require an investment of staff time and resources. It will require organizational culture change. However, I believe it is necessary because in the coming years, water quality and water rights issues will continue to increase in complexity, quantity and variety – and our resources, in terms of personnel and funding, will remain limited. We cannot simply do business as usual and expect increased water quality and beneficial use improvements. We must work with stakeholders to ensure we direct our efforts to those activities that demonstrate the most benefit for California's water resources.

2. Roles/Interactions Among State and Regional Water Boards

Current law establishes a complex state board/regional board structure for implementation of water resources programs. In recent years, this structure has come under increased stress due to the changing nature of water resource challenges in the state.

How do you view the role of the state board in relation to the regional boards?

I believe the State and Regional Water Boards are partners and must work cooperatively to achieve our collective mission to preserve, enhance, and restore California's water resources. The Office of Research, Planning and Performance will facilitate activities to further strengthen this collaboration.

The State Water Board's role is to set statewide policies and provide guidance to the Regional Water Boards to ensure appropriate and consistent application of these policies. Consistency does not mean that Regional Water Boards must take the same approach to a water quality problem, but that their approaches are consistent with the overarching policy and do not create significant inequities among regions. Generally, Regional Water Boards have more direct experience and opportunities to identify and test approaches for solving regional water quality problems. However, the State Water Board must be prepared to act should a regional approach fail to effectively address a pressing water quality problem of statewide concern.

The State Water Board's role is to review and adjust, where appropriate, Regional Water Board actions through the petition process. However, I believe the State Water Board should not depend on the petition process as the primary means for setting statewide policy. Instead, we must be proactive in working with the Regional Water Boards and our stakeholders to identify emerging water resources needs and priorities and take appropriate front-end actions to address them.

The State Water Board's role is to work effectively and collaboratively with Regional Water Boards to ensure the highest water quality that is reasonable. I participate in a monthly conference call with all Water Board chairs to identify issues and discuss collaborative solutions. Also important is the role of each State Water Board member as a liaison to one or two Regional Water Boards. In a recent memorandum to the Regional Water Board members, I outlined the roles and responsibilities of the liaisons and committed the State Water Board to this critical function. I believe it builds relationships and serves as a vital communication tool between the Water Boards' members, especially as we work collaboratively to set priorities, plan actions, identify measurable targets, and ensure accountability.

Do you believe that the state board should have a more centralized role in management of issues and staff at the regional boards?

I support the regionalized approach to management of issues and resources, consistent with statewide policies and priorities; however, I am open to looking at any reasonable alternatives that would allow the Water Boards to operate in a more efficient and cost-effective manner. Within the existing Water Boards system, the State Water Board has the responsibility to set consistent statewide policy, while the Regional Water Boards have the flexibility to pursue different approaches to meet this policy, based on regional needs and conditions. Therefore, it is important for regional executive officers, who are selected by and serve at the pleasure of their Regional Water Boards, to have flexibility in managing the issues of interest to their boards and assigning staff accordingly.

Do you believe that the number and size of the regional boards should be changed?

I do not see a need to change the existing Regional Water Board number and boundaries. The Legislature has fashioned the existing Regional Water Board boundaries based on precipitation, topography, population, and other factors. While not exact, the regional boundaries largely work.

In recent years, there have been several proposals to reduce the number or change the representation of members on the Regional Water Boards. These proposals generally reflect perceived changes in regional water quality needs and concerns, as well as attempts to facilitate maintaining a quorum for Regional Water Board meetings. I am open to exploring alternatives that would improve efficiency and effectiveness – as long as the reduction of or change in board membership does not result in the loss of critical expertise on the Regional Water Boards.

Do you believe that the current compensation for regional board members is appropriate, given the workloads of the regional boards?

The Regional Water Board members I have had the pleasure of knowing are hard working and dedicated. They commit substantial portions of their personal and professional time to Regional Water Board matters. The per diem of $100 does not reflect the amount of work the board members do. Similarly, it does not reflect the important contribution they make to water quality in California.

3. Water Quality/Agricultural Runoff

The Porter-Cologne Water Quality Control Act requires the state and regional water boards to address pollution and discharges from agricultural runoff. Pollution from this runoff is among the most serious water quality problems facing the Central Coast, Central Valley and other regions of the state, in particular affecting water quality of millions of Californians. It is a complicated but critical task to identify and reduce these pollutants.

The state and regional boards have traditionally granted "waivers" of water quality permits (i.e. "waste discharge requirements") to dischargers, rather than requiring permits. These waivers are supposed to contain general conditions to improve water quality and reduce discharges. However, most regional water boards have complained that they do not have sufficient funding and staffing to monitor and enforce waivers.

What steps do you support to reduce water pollution from agricultural runoff? How would you ensure that there is sufficient funding and staffing for the regional boards to perform their jobs in protecting water quality from these discharges? What actions remain to be taken by the boards to reduce agricultural discharges?

Reducing water pollution from agricultural runoff is an important priority for me. Waiver programs provide good opportunities for collaboration on and demonstration of best management practices (BMPs) to address agricultural waste discharges. However, over time and as information is gathered, the various waiver programs must be able to demonstrate their effectiveness – not in the number of dischargers enrolled, inspections conducted and dollars collected, but in water quality improvements achieved. I believe waivers, when issued with clearly specified requirements, focused performance measures, appropriate oversight, and meaningful monitoring programs, are reasonable regulatory approaches for to reduce water pollution from agricultural runoff.

I believe our programs to reduce pollution from agricultural runoff should be properly funded in staffing and resources. To implement the waiver program, the Legislature included 22 positions in the state budget for the 2004-2005 fiscal and ongoing years and specified that the funding for the new positions would come from new waiver fees. The State Water Board adopted a fee schedule for agricultural waivers in September 2005. I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for waiver programs.

The Regional Water Boards and agricultural coalitions/groups should continue the implementation of their outreach, education, and monitoring and reporting programs. Technical workgroups need to be formed to assess the monitoring data and to identify impaired waters. Where necessary, proven BMPs should be identified and growers should deploy them. The Regional Water Boards should also capitalize on opportunities to collaborate with other state and local agencies to share monitoring information, technical expertise and protocols for addressing agricultural discharge concerns.

4. Implementation of SB 810 (Burton)

In the review of timber harvest plans, water quality concerns of regional water boards and wildlife concerns of the Department of Fish and Game have often been

superseded by timber harvest plan approvals by the Department of Forestry and Fire Protection. SB 810 (Burton) of 2003 sought to correct these problems.

What actions has the state board taken to implement SB 810?

As you know, SB 810 vested the responsibility for implementation at the regional level. It prohibits the California Department of Forestry and Fire Protection (CDF) from approving a timber operation if the appropriate Regional Water Board (or, upon delegation, its Executive Officer), finds that the proposed activity will result in a discharge into a sediment-impaired water body, or will cause or contribute to a violation of the regional water quality control plan.

I have found this law to be very successful and instrumental in addressing water quality issues associated with timber harvesting activities. As a result of SB 810, Regional Water Boards have been able to resolve water quality concerns during the interagency review team process or the director's determination period, or through the Regional Water Boards' own regulatory processes. In some key instances, Timber Harvest Plans (THPs) with unacceptable water quality impacts have been withdrawn in the face of a potential "SB 810 veto."

5. Ocean Pollution

The Pew Oceans Report and US EPA both express alarm at the overall condition of the nation's coastal waters. The EPA found that the overall condition of the West Coast's coastal waters were fair to poor. Specifically, 17 percent of these waters were listed as impaired for human and aquatic use, 10 percent impaired for aquatic use, and only 14 percent unimpaired. In addition, California led the west coast in beach closures and advisories with 66.2 percent of its beaches having been closed or advisories issued.

What actions are you taking to reduce ocean pollution and ensure the continued viability of fisheries and recreational use along California's coast?

I am committed to protecting the health of our oceans – a healthy ocean is part of the State's legacy, and is necessary to support California's human and wildlife populations. Reduction of ocean pollution is essential to continue the fisheries and recreational uses along California's coast. In April 2005, the State Water Board adopted amendments to the Ocean Plan, California's water quality control plan for protecting coastal waters. These amendments include the addition of water contact bacteria standards and a requirement to review all exceptions to the Ocean Plan during the Triennial Review. There are other efforts at the State Water Board to address ocean pollution:

- I believe our storm water program, especially the enforcement of the waste discharge prohibition in Areas of Special Biological Significance, is critical to reduce pollution in urban, industrial, construction, and highway runoff.
- I am especially excited about our efforts with the Southern California Coastal Water Research Project to develop Rapid Indicators to monitor for pathogen contamination of beaches. Monitoring is a key ingredient to protecting coastal waters.
- Sewage discharges from cruise ships and other ocean going vessels are a significant problem, and the State Water Board is requesting the USEPA to create a no-discharge zone for sewage discharges from ships in all California coastal waters. I fully support this action.

Additionally, I will strongly push for expeditious completion of the following activities to help address ocean pollution: development of regulations for onsite wastewater treatment systems; development of a statewide policy to address the impacts of once-through-cooling by power-generating facilities; development of sediment quality objectives for toxics substances, applicable to coastal bays and estuaries; and implementation and enforcement of activities to control nonpoint source pollution.

Finally, I believe interagency collaboration and coordination are essential to ocean ecosystem management. The State Water Board is working with the Ocean Protection Council on joint priorities for funding ocean water quality projects. We are also working collaboratively with the Council's staff, and staff from the Department of Fish and Game, the California Energy Commission, and the Coastal Commission to address various water quality concerns.

6. Perchlorate Contamination

Incidences of perchlorate contamination in California's drinking water are on the rise. Last year, the Office of Environmental Health Hazard Assessment (OEHHA) issued its drinking water public health goal (PHG) for perchlorate at 6 PPB.

What actions are you taking to ensure perchlorate water contamination will be cleaned up? Do the state board and the regional boards have standards for the investigation and remediation of perchlorate? If so, what are those standards?

In my prior capacity as Deputy Secretary at the California Environmental Protection Agency (Cal/EPA), I strongly supported OEHHA's health-risk assessment efforts to set the perchlorate PHG and believe, given its threat to pregnant women and their fetuses, that perchlorate in drinking water must be cleaned up as expeditiously as possible.

The Water Boards and the Department of Toxic Substances Control (DTSC) work cooperatively to identify locations of and potential sources and responsible parties for perchlorate water contamination. The highest priority effort has focused on areas around known contamination of public and private drinking water wells. The Central Valley, Central Coast, Los Angeles and Santa Ana Regional Water Boards have taken aggressive enforcement actions against parties responsible for perchlorate contamination. The State Water Board has provided approximately $6 million in funding (from the Cleanup and Abatement Account and Proposition 50) to treat perchlorate contaminated groundwater from existing public supply wells in the Rialto-Colton area.

In the process of identifying potential sources of contamination, the Water Boards use the detection level (4 parts per billion) in public supply wells. For treating perchlorate contaminated groundwater to provide water for drinking water use, the current "standard" is the PHG of 6 parts per billion.

What actions would you take to cleanup the Colorado River water to ensure that Perchlorate contamination is removed?

The source of the perchlorate in the Colorado River is the former Kerr-McGee perchlorate manufacturing facility in Henderson, Nevada. The cleanup of the Kerr-McGee facility is being overseen by the State of Nevada with assistance from the US EPA. Because of the significant potential impact on California's water supplies, State Water Board staff is closely monitoring the progress of perchlorate cleanup at the Kerr-McGee facility, as well as perchlorate concentrations in the Colorado River. We are encouraged that recent perchlorate concentrations in the Colorado River were measured below 3 parts per billion, down from over three times that level in 2000. The US EPA expects perchlorate concentrations to continue to decline based on the success of the cleanup efforts at the Kerr-McGee facility.

7. Impaired Water Bodies/Total Maximum Daily Loads

The state and regional boards have embarked on a multi-year process to develop, adopt, and implement Total Maximum Daily Loads (TMDL's) for water bodies throughout the state. There has been controversy over how waters are identified and listed by the state board, as well as what steps the boards will take actually to implement TMDLs.

Please describe those actions you will take to ensure that impaired waters are identified, and that effective TMDL's are developed, adopted and implemented and enforced in a timely and open fashion.

I am committed to the development of a robust and comprehensive surface water ambient monitoring program (SWAMP), providing high quality data collected with approved quality assurance plans, to ensure that impaired waters are identified and

listed in accordance with the State Water Board's "Water Quality Control Policy for developing California's Clean Water Act Section 303(d) list." The State Water Board recently conducted a workshop to receive preliminary recommendations from the external Scientific Planning and Review Committee (SPARC), which conducted a scientific review of SWAMP's elements. I look forward to receiving SPARC's final recommendations and to their implementation toward a successful and sustainable surface water monitoring effort for the Water Boards.

I am committed to improving scientific support to the Regional Water Boards for the development and peer review of TMDLs. In 2005, the Water Board staff and consultant reviewed how science and engineering are used in the implementation of water laws, policies and programs – including the TMDL program – and prepared a report titled *"Role of Science and Engineering in Decision-Making Within the State and Regional Water Boards."* The report includes recommendations to enhance scientific support to the Water Boards. We will evaluate these recommendations and take action to enhance our scientific resources and enable the Regional Water Boards to access expertise not currently available (e.g., economic analysis and health risk assessment).

I support efficiencies in the TMDL program to allow for "quicker" TMDL development by the Regional Water Boards. Timely completion of a TMDL is dependent on a number of factors including, the complexity of the problem being addressed, the availability of good quality data and models, and the availability of contract resources. However, Regional Water Boards should learn from one another and wherever possible adopt the approach used in successful TMDLs. This approach of using "categorical" TMDL templates has been very successful in developing and adopting the Southern California bacteria TMDLs.

I am aware of concerns from stakeholders and the USEPA about the pace of TMDL development and adoption. In a recent meeting with water officials at USEPA Region 9, I committed to working with USEPA to explore options, including further state-federal cooperation, to streamline and expedite our processes, while maintaining the high level of public participation and high quality of the TMDLs and implementation plans that are being developed by the Regional Water Boards.

For example, how would you address TMDL implementation plans such as the one recently approved by the North Coast RWQCB for the Scott River, which relies on voluntary actions by dischargers to clean up pollution that has impaired the water body at issue?

The State Water Board encourages voluntary action and regulatory actions by other groups to proactively cleanup California's waters. However, these actions must conform to State Water Board regulations, including the non-point source enforcement and implementation policy that requires all discharges to be regulated through permits, waivers or prohibitions.

The TMDL policy requires, where "voluntary" and third party actions are used to implement the TMDL, that the TMDL include: assurances that the actions will successfully meet the wasteload and load allocation; a requirement for monitoring to be able to measure success; and a time frame for the implementation, including a date on which the Regional Water Board will assess the program of implementation and determine if the "voluntary" or third party efforts are successful, or if the Region needs to use its direct regulatory processes (such as clean up and abatement orders, cease and desist orders etc).

8. State and Regional Water Boards Enforcement Program

Last year, the Office of the Secretary of CAL-EPA issued a report on the status and effectiveness of enforcement programs at each of the boards and departments within the agency. Among other things, the report suggested that the state and regional water boards had one of the least effective enforcement programs in CAL-EPA. More recently, there has been discussion of the Central Valley Regional Water Board's lack of enforcement action against Hilmar Cheese Facility, the settlement action, and subsequence action by the state board in rejecting that settlement.

Do you believe that the state and regional water board enforcement programs are at appropriate levels or do they need to be improved?

Concerns have been expressed that the Water Boards' enforcement activities have been inconsistent and may not be based on the greatest risk to water quality. I believe that there is a lot of room for improvement in the Water Boards' enforcement efforts, starting with a clear articulation of expectations and priorities. I also believe that additional resources should be dedicated or redirected to support enforcement activities, especially at the Regional Water Boards.

What specific actions will you take as a state board member to address these concerns about enforcement and accountability at the state and regional water boards?

The Water Boards are accountable to the public to assure the compliance of facilities that we regulate. Enforcement actions taken by the Water Boards must be timely, fair, consistent and firm. I strongly support reorganization to consolidate State Water Board enforcement personnel, including a team of prosecutorial attorneys, into an Office of Enforcement that reports directly to the State Water Board's Executive Director.

My charge to this new Office of Enforcement is to, first, update and strengthen the Water Boards' Enforcement Policy and Plan to reflect priorities based on threat to water quality, to ensure consistent understanding and application by the Regional

Water Boards, and to clearly articulate our expectations to the regulated community. Second, in order to make enforcement accountability clear and visible, the Office of Enforcement will establish quantifiable targets and performance measurement systems for regular reporting to the State Water Board and the public. These targets should address the following: chronic violators, environmental justice, reporting fraud and non-reporting violations, illegal discharges (facilities outside our regulatory net), discharger performance evaluation, penalties, and mandatory penalties backlog. Among other responsibilities to be specified, the Office of Enforcement will ensure the collection and analysis of violation and enforcement information, and provide an annual compliance report card on the Internet.

Will you seek funding or legislative changes to implement those initiatives?

My first priority on enforcement is to complete the activities outlined above. During that process, we will be exploring and developing further ideas and changes, legislative and programmatic, to ensure a successful and appropriately funded enforcement program for the Water Boards. Additionally, through the activities of the Office of Research, Planning and Performance, we will be looking for opportunities in the near-term to maximize the use of existing resources and, where possible and appropriate, redirect funding to support enforcement activities.

What timetable do you envision for completing those initiatives?

The enforcement re-organization will be completed in February 2006. The initiatives I outlined above will begin immediately thereafter. The Office of Enforcement will present their workplan and status report to the State Water Board in June 2006.

9. Numeric Limits in Stormwater Permits

In recent months, the state and regional water boards have been grappling with the issue of whether or not to impose numeric limits on stormwater from industrial sources. This past September, the board held a workshop on the issue and took testimony from experts.

Do you support the use of numeric limits on stormwater discharges? Please explain your reasons for your position. Does the board plan to take action to follow up on its September workshop to adopt numeric limits for stormwater permits? What is your timetable for this action?

I believe it is important to seriously consider the use of science-based numerical limits in stormwater permits and determine where they are appropriate and feasible to achieve water quality protection. This issue is in a pending adjudicative proceeding before the State Water Board. Therefore, I believe it would be inappropriate for me to comment further at this time. The State Water Board's decision on numeric effluent limitations will ultimately be based on the evidentiary

record. We are awaiting comments and conclusions from the storm water panel of experts that met in September. I have directed State Water Board staff to ensure that the panel's report is completed and findings be reported to the State Water Board by March 2006.

10. Surface Water Ambient Monitoring Program (SWAMP)

Most parties (industry, environmentalists, local governments) agree that water quality monitoring is one of the most basic tools used to understand the level of pollutants in water and the steps needed to reduce those pollutants. The surface water ambient monitoring program is a key program in this regard. Despite budget action by the Legislature, funding for this SWAMP program has been delayed, diverted, or otherwise not forthcoming in the amount appropriated.

Do you believe that the SWAMP is adequately funded? If not, what is an adequate level of funding for this program?

There is consensus among all stakeholders that the current program is under funded. SWAMP is currently funded at $3.4 million and 17 staff positions, approximately 7% of what was estimated in the November 2000 Report to the Legislature. Recently, questions have been raised about the discrepancy between the level of current SWAMP funding and the SWAMP budget allocation approved by the Legislature. Concerns have also been expressed about the use of SWAMP funds for the California Integrated Water Quality System (CIWQS). I have directed State Water Board staff to conduct a thorough review of these concerns and prepare a report to the Board in February 2006. This report will be made available to the public.

With the existing budget, the program has focused on enhancement and coordination of existing monitoring efforts and the gradual development of the necessary "infrastructure", including a strong quality assurance program and a data management system, for a comprehensive and comparable monitoring program. Additionally, SWAMP has balanced the rate of program development against the need for regional monitoring. Most Regions are implementing a resource-limited targeted design that provides information on existing conditions in watershed assessment units. The statewide monitoring has not been implemented as designed.

A ten-year implementation strategy for SWAMP was recently approved by USEPA. It was estimated that complete implementation of the Strategy will require an additional 40 staff positions and $35 million in contract funds. This is substantially less than the original estimate and is possible by implementing the efficiencies outlined in the strategy.

How should SWAMP be funded? (e.g. Cleanup and Abatement fund, discharge fee revenues?)

SWAMP was originally funded using State General Funds, but is currently funded by a monitoring surcharge on waste discharge permit fees. I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for SWAMP. Some options that have been mentioned by various stakeholders are: Federal Clean Water Act Section 106 funds; Clean-Up and Abatement funds; Supplemental Environmental Project Funds; and various user and discharger fees.

Are there opportunities to work with other state and regional water agencies to leverage their monitoring activities to enhance the data the Water Boards are developing?

Given our limited resources, I believe collaboration with other agencies to leverage monitoring activities is critically important. The SWAMP Strategy, outlined in "*A Comprehensive Monitoring and Assessment Strategy to Protect and Restore California's Water Quality,*" includes the following tactics to promote an efficient increase in the amount of usable water quality information that is available:

- Improve and strengthen SWAMP by using a monitoring framework and data standards consistent with the guidance developed by the National Water Quality Monitoring Council;
- Develop and promote the use of multiple monitoring tools such as statistically based surveys, judgmental surveys, predictive modeling, risk assessments, expert systems and newer information and monitoring technologies;
- Continue working with monitoring programs currently coordinated through the California Environmental Data Exchange Network (CEDEN) and hosted by the Department of Water Resources; and
- Build stronger partnerships with agencies, watershed groups, volunteer monitors and others to facilitate the sharing of information, the collection of comparable data and the use of monitoring tools.

11. Groundwater Protection

Numerous sources of contamination threaten the state's limited and invaluable groundwater supply. State water quality law requires that the state protect all of its waters, both surface water and groundwater. Numerous regional and statewide water quality management plans exist to protect surface water, yet none exist for groundwater. California voters have signaled their support for increased attention to groundwater by supporting $50 million in Prop 50 bond funding for groundwater management.

Do you believe the board should take action to protect groundwater quality beyond the current groundwater monitoring effort? If so, which actions should the board take?

Groundwater is a critical water resource for Californians and I take very seriously the Water Boards' charge to protect groundwater quality. On January 31, 2006, the State Water Board and Central Valley Regional Water Board are holding a joint workshop to discuss options to address salinity in groundwater and surface water in the Central Valley. I intend to expand this effort to address salinity concerns, including those in groundwater, on a statewide basis.

The Water Boards' groundwater ambient monitoring assessment (GAMA) program is nationally recognized for its innovative and comprehensive approach to statewide assessment of groundwater quality. However, the Water Boards have an extensive groundwater quality protection program in addition to GAMA.

Each Regional Water Board's basin plan includes a groundwater quality component that sets standards/water quality objectives for groundwater. Basin plans also include prohibitions of certain waste discharges, such as septic tanks in areas with significant problems. Implementation of the basin plans includes issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminant sites (e.g., discharges without requirements such as spills and leaks). The first WDRs for landfills were issued in the 1940s. Continued regulation has resulted in over five thousand currently active WDRs for discharges of waste to land.

Discharges of waste that were never authorized are subject to cleanup or abatement. The board cleanup program has closed over 30,000 underground storage tank (UST) sites with 15,000 UST sites under investigation and cleanup, and closed 750 non-petroleum contaminant sites with 1600 sites under investigation and cleanup.

Other significant actions include:

- The UST Cleanup Program reimburses over $200 million annually for investigation and cleanup at UST sites.
- The UST Leak Prevention Program is a national model in setting standards for tank design including secondary containment.
- The State Water Board recently adopted requirements that allow for more rapid degradation of waste in landfills to minimize risk to groundwater quality for future generations.
- The State Water Board anticipates adoption regulations for discharges from septic tanks in 2006.

What actions do you support to ensure adequate funding for the groundwater ambient monitoring assessment program?

Trends in groundwater quality are often only evident over a time period of decades. GAMA, which implements the statewide comprehensive monitoring program developed pursuant to AB 599 (Liu, 2001), must be a long-term program with a stable funding source for continuing monitoring and assessment. $50 million from Prop 50 is being used to contract with the U.S. Geological Survey to monitor and assess the highest 116 priority groundwater basins. GAMA is also annually supported by $1.9 million in waste discharge permit fees (WDPF) associated with the Ambient Monitoring surcharge. The WDPF fees replaced General Funds and supports State Water Board staff, as well as focused groundwater studies, including the voluntary domestic well monitoring program.

I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for GAMA. Some stakeholders have suggested that the most logical source for continuation of the GAMA program is WDPF funding.

12. Brownfield Cleanup

AB 1906 (Lowenthal) of 2004 allocated $10 million per year from the Petroleum Underground Tank Cleanup Fund for brownfield cleanup. The Administration, CAL-EPA and numerous other parties claim that brownfield cleanup is an urgent priority. Yet, it has been nearly a year since these funds were made available and no funds for cleanup have been spent.

What is the status of the board's efforts to ensure these funds are distributed with all appropriate speed to cleanup brownfields?

The State Water Board requested and received an appropriation of $10 million of these funds for the 2005-2006 budget year. Emergency regulations for the program were adopted by the Board on October 20, 2005, and approved by the Office of Administrative Law on November 28, 2005. The application process is underway. Initial grants will be issued in spring 2006.

When will parties be able to apply for these cleanup funds?

Parties can apply for funds at any time. A downloadable application package was posted on the Water Board's website in late November, and a notice announcing that applications may now be submitted was sent out to all appropriate email lists. The initial filing period ends on January 12, 2006.

Why has it taken so long to make these funds available?

AB 1906 became law on January 1, 2005. While the bill provided for $10 million to become available immediately, the funds were subject to appropriation, which did

not occur until July 2005. Also, because the statute is very general, and included eligibility criteria that were different from those used for other UST grants, we felt it would be better if we adopted regulations to establish the ground rules for the program, including the conditions for eligibility, the maximum size of a grant, priority criteria and administrative procedures. Unfortunately, even under the best circumstances, these regulatory processes take time.

I appreciate the opportunity the Legislature has given us with these funds, and I am especially sensitive to their limited availability. State Water Board staff is coordinating with various brownfields stakeholders, including our colleagues at DTSC, and I firmly expect these funds to be fully utilized in the time available (by January 1, 2008) for priority brownfields cleanup projects.

What steps is the board taking to prioritize and expedite the identification and cleanup of brownfields in urban areas so that those lands can be "recycled" and put into productive reuse?

The State Water Board, in coordination with the Regional Water Boards, has initiated a variety of efforts intended to facilitate the investigation and cleanup of sites and return them to productive economic use.

One of our most critical challenges has been providing adequate staffing to cover the brownfields workload. As part of the FY 2005-2006 budget, the State Water Board sought and was approved for an additional 9.5 PYs to address the brownfields workload as part of our Spills, Leaks, Investigations and Cleanup (SLIC) program. With these resources, a brownfields coordinator was established at the Division of Water Quality, and the remaining PYs were allocated to the Regional Water Boards based on each region's share of brownfields work.

The State Water Board, the Regional Boards, DTSC and Cal/EPA has negotiated and signed an agreement with DTSC, designed to improve coordination of cleanup oversight. This agreement, called the Brownfields Memorandum of Agreement, or MOA, spells out a process that is followed in deciding which agency is to be the lead regulatory agency. In addition, the agreement commits to developing common sets of site investigation and cleanup procedures, as well as regularly scheduled coordination meetings. Since its signature on March 1, 2005, oversight responsibilities have been designated for nearly 100 sites.

Outreach is another important aspect of the Water Boards' brownfields program. In late 2004 and 2005, the State Water Board, along with the Regional Water Boards, participated with DTSC and the California Environmental Protection Agency (CalEPA) in a variety of workshops intended to educate brownfields stakeholders and communities on our programs and resources available to assist in addressing brownfields. The focus of these workshops ranged from specific technical presentations on screening levels and liability relief legislation to general brownfields

program overviews. These workshops were well received by those who attended. In coordination with CalEPA and DTSC staff, we are looking at additional outreach opportunities for 2006. One possibility being explored is to team with the State Treasurer's Office and the Business, Transportation and Housing Agency to develop a focused workshop on developing infill housing on brownfields.

13. Water Rights

Please provide a status report on the board's efforts to reduce or eliminate the backlog in issuance, adjudication and enforcement of water rights granted under the law.

I, too, am very concerned about the State Water Board's progress on reducing the water rights backlog. Regardless of the many resource challenges facing the Division of Water Rights (Division), we have an obligation to conduct water rights processes efficiently and responsively. Division management and the State Water Board executive team are exploring options to maximize existing resources, streamline processes as appropriate, and ensure improved response time.

Following is a brief status update, as requested. We would be pleased to provide additional details on any of these items.

Enforcement of water rights is a discretionary action taken on a case-by-case basis. There is no way to estimate the number of potential violators throughout the State without conducting detailed investigations.

There are three types of water right adjudications: (1) statutory or stream system adjudications, which are initiated by outside parties; (2) court reference adjudications, which are initiated by the courts; and (3) ground water adjudications which can be initiated by the Board if certain factual determinations have been made. There are no adjudications currently pending at the State Water Board.

The State Water Board has implemented steps to reduce the "backlogs" in processing water right applications for permits, petitions for changes and extensions of time, and issuance of water right licenses. A review of historical information shows that the backlog in processing water right applications has been reduced by about 25 percent since the late 1970's. Since October 2003, the State Water Board has reduced the number of pending applications from 719 to 617 (as of November 30, 2005).

In 1997 and again in 2002, the State Water Board conducted stakeholder workshops to solicit comments and suggestions on how to improve its water right processes. As a result, the State Water Board has made changes to its practices in processing water right applications and petitions. Since 1995, the State Water Board has

worked with the Department of Fish and Game and federal fishery agencies to develop criteria that can be used to readily identify water right projects that are highly unlikely to impair aquatic resources. Pursuant to the requirements of AB 2121, which became effective January 2004, the State Water Board is in the process of promulgating instream flow requirements to be used in the administration of water rights for rivers in Northern California coastal counties, which is where most pending applications are located.

In the past year, the State Water Board also prepared a feasibility study to determine the benefits of upgrading its water rights computer system. The system that is currently being used was developed in 1995 based on system design that was implemented using a mainframe computer prior to 1980. The State Water Board believes that improving its computer system will result in efficiencies that can be used to further reduce the backlog.

What actions has the State Water Board taken, and how much does it spend, to monitor and enforce water rights to ensure that the waters of the state are not over-appropriated?

I believe water rights enforcement, like all enforcement activities, should be strategic, timely, consistent, fair and firm. The State Water Board's new Office of Enforcement will work with Division management and staff to review water rights enforcement activities and develop an implementation strategy to maximize the use of our limited enforcement resources.

In 2005, the State Water Board enforced against two water large districts in Mendocino County and continues monitoring for compliance with the final orders. The State Water Board also held hearings on proposed enforcement orders against the federal and State water export projects in the Sacramento-San Joaquin Delta and against a large community service district in Southern California. The estimated cost solely for the Division's prosecutions of the two pending enforcement actions in FY 2005-2006 is $450,000. The State Water Board estimates that it spent an additional $250,000 on hearing expenses related to the two enforcement actions.

This year, the State Water Board initiated a proactive water rights investigation of over 700 water storage facilities located within the Russian River watershed in Sonoma County that are not authorized by a known water rights. We anticipate that 200 of these storage facilities will be found to be unauthorized diversions of water. The Division of Water Rights is creating an enforcement priority list of all potential enforcement cases from this investigation.

The Division's Enforcement Section, consisting of the Complaint, Licensing and Compliance units, perform statewide field inspections to review complaints, monitor compliance with permit and license terms and conditions, issue licenses, and conduct special watershed investigations. Last fiscal year, the Enforcement Section was supported with about $2.2 million.

It has been reported that, due to funding shortfalls and lack of staff, the division of Water Rights is unable to act upon complaints and licenses in a timely or adequate fashion. Please provide information on the number of complaints received, the State Water Board response, and the average time frames for responses.

Water rights stakeholders raised these same concerns in 1997, prompting a thorough review of the water right complaint program. During the nine years since that review, the State Water Board received 387 water right complaints. Eighty-two percent, or 316 of these complaints, were timely processed to closure. Another 96 complaints received prior to January 1, 1997, were also closed during the period with the assistance of other program staff. The average time to close incoming complaints is about nine months.

Complaints filed with the State Water Board are becoming more complex and will inherently take time to finally resolve. Additionally, final resolution of some water right complaints must wait for a court decisions or a settlement between parties that elect to negotiate an independent resolution of the issues. Finally, any enforcement taken as the result of a complaint investigation greatly extends the closure date. For example, the State Water Board recently held a hearing on an enforcement initiated following a water right complaint investigation. Final closure of that complaint may take years to exhaust all legal remedies available under law.

Thank you again for this opportunity to provide information to the Senate Rules Committee. As requested, I have reviewed my Form 700, Statement of Economic Interest, and there are no changes to that document. If additional information is needed on any subject area, please contact me at (916) 341-5611.

Sincerely,

Tam M. Doduc

Tam M. Doduc
Board Chair

State Water Resources Control Board

Executive Office

n C. Lloyd, Ph.D.
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Arnold Schwarzenegger
Governor

January 4, 2006

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

CONFIRMATION HEARING FOR GERALD D. SECUNDY, VICE CHAIR OF THE STATE WATER RESOURCES CONTROL BOARD, ON JANUARY 18, 2006: SUBMITTAL OF ANSWERS

I appreciate the opportunity to provide Senator Don Perata and his colleagues on the Senate Rules Committee with some of my goals as a member of the State Water Resources Control Board, as well as to answer the Chairman's specific questions. I am honored to have the privilege to serve on the State Water Board and am committed to the mission of the board to preserve, enhance, and restore the qualities of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

As requested, I have reviewed my Form 700, Statement of Economic Interest, and there are no changes to that document.

QUESTION 1: General.

Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Water Resources Control Board? What are the most pressing problems and challenges you see for the board in the coming years?

GOALS/ACCOMPLISHMENTS

All members of the State Water Board have the same goal, which is to enforce the Porter-Cologne Act and to ensure that the beneficial uses of all our water bodies are achieved. However as

individuals we also have particular interests, and I would hope to achieve the following during my tenure on the Board:

◊ I have a fervent interest in the protection of our ocean and beaches. Although improvements in water quality have been made over the last few years, we still have a long way to go in order for our beaches to be safe and swim able on a year-round basis, and for our marine waters to continue to provide a protected habitat for the marine life. This means that we need to solve the problem of stormwater runoff. The current system is simply not achieving water quality goals. Our Areas of Special Biological Significance (ASBS) have over 1600 effluent streams pouring into them, which carry a significant number of pollutants. These discharges must cease or be diverted to other areas. Finally, discharges of sewage from ocean-going vessels and local boats and ships must be brought under control.

◊ California has over 1.2 million onsite waste disposal systems (septic systems). Many of these have not been inspected or maintained in decades. Some are leaking bacteria directly into drinking wells. These systems must be inspected and, where necessary, modified to protect local water tables or already impaired water bodies.

◊ The New River and the Tijuana River flow into the United States from Mexico and their waters are either untreated or at most subject to a primary waste treatment. These are probably the two most polluted water bodies in California and a cleanup is vital.

◊ Finally, and most importantly, enforcement of all our regulations needs to become our highest priority. It does no good to pass new regulations or to issue cease and desist orders if they are not monitored and enforced.

CHALLENGES

The most pressing challenges for the Water Board are to achieve the above goals and a substantial list of others (e.g., agricultural discharges, Total Maximum Daily Limit [TMDL], Timber Harvest Plans [THP], etc.) with the current manpower and monetary resources. Given the realities of the State's fiscal position it would be unrealistic to expect substantial increases in our resources. We must therefore learn to work smarter and more efficiently and effectively with what we have, through innovations, partnerships with other agencies, and emphasis on the most important tasks before us.

We must also be able to educate the public as to our changing environmental conditions. Water is no longer an unlimited resource (if it ever was) and we cannot continue to just pump more water over the Tehachapi's to quench our thirst. We must be smarter in capturing our stormwater and recharging our aquifers. In addition, the state should continue programs like the "Erase the

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Waste" campaign and collaborate with local governments to make certain that through education the next generations will appreciate that water is indeed our most valuable resource.

QUESTION 2: Roles/Interactions Among State and Regional Water Boards

How do you view the role of the state board in relation to the regional boards?

The State Water Board's role is to set statewide water quality policy consistent with the Porter-Cologne Water Quality Control Act. A large part of the State Water Board's responsibility in this regard is to provide appropriate guidance to the Regional Water Boards, and to work effectively with them to ensure the highest water quality that is reasonable. At times, the most effective approach will be to leverage the individual strengths of particular Regional Water Boards. However, the State Water Board must be prepared to act decisively and boldly to establish state water quality policy when a cooperative regional approach does not work to address a pressing water quality problem of statewide concern.

While the State Water Board will generally lead the Regional Water Boards, that does not mean the State Water Board should be leading on every water quality issue. Some Regional Water Boards have expertise on specific subjects or deal with issues unique to their region. Battling seawater intrusion, abandoned mines, and timber are issues that do not necessarily require a monolithic State Water Board response. A strength of the water board system is its flexibility and the ability to match an individual Board's strengths to the issues of concern within its region. It also allows appointed board members, and not just staff, to become informed on regional issues.

Consistency should not always require that every Regional Water Board take the exact same approach to a water quality problem. Another asset of the regional water board system is that different regions may serve as incubators to test different approaches to solving water quality problems. So long as these approaches are consistent with overarching policy and do not place disproportionate burdens on persons in different regions, there is no harm. The State Water Board's role should encourage innovative problem solving in the regions. If necessary, the State Water Board can take appropriate action to ensure a particular approach becomes the statewide standard or adjust the actions of a particular Regional Water Board through the petition review process.

Do you believe that the state board should have a more centralized role in management of issues and staff at the regional boards?

Yes. While the Regional Water Boards generally do a good job consistently implementing state water quality policy, there is room for improvement. A possible solution is to have the Regional

Water Board executive officers report directly to the State Water Board's Executive Director, or have a dual reporting relationship to the State's executive officer and the Regional Water Board's chair. Creating a direct or dual line of responsibility to the State Water Board's Executive Director will enhance centralized accountability and responsibility. This will foster greater consistency among the staff of the Regional Water Boards.

Do you believe that the number and size of the regional boards should be changed?

No. The Porter-Cologne Act's use of nine regions has not proved problematic. The Legislature fashioned the existing regional boundaries based on precipitation, topography, population, and other factors. While not exact, the regional boundaries largely work. Moreover, the geographically smaller regions tend to have the larger populations. As a result, the size of the regions does not correspond to the workload. I do not see a reason to change the existing Regional Water Board boundaries.

Under current law, each Regional Water Board has nine members with varying backgrounds. A nine-member board requires a quorum of five board members. Considering that Regional Water Board members are essentially unpaid volunteers, often with fulltime jobs, it can sometimes be difficult to attain a quorum, especially when there are vacancies on a Board. Similarly, Regional Water Board members may be traveling from locations hours apart to attend Regional Water Board meetings. These problems have become more acute as the importance, complexity, and number of Regional Water Board meetings have increased. An alternative approach that would result in fewer cancelled meetings due to a lack of a quorum would be for the Legislature to define the number of members that constitutes a quorum of the Regional Water Boards as either 3 or 4 members if there are existing vacancies.

Do you believe that the current compensation for regional board members is appropriate, given the workloads of the regional boards?

Absolutely not. The Regional Water Board members I have had the pleasure of knowing are hard working, dedicated public servants. They commit substantial portions of their personal and professional time to Regional Water Board matters. The per diem of $100 does not reflect the amount of work the Board members do. Similarly, it does not reflect the important contribution they make to water quality in California. The annual combined per diem cap of $13,500 per Regional Water Board also needs to be raised significantly.

One possible method of reducing the workload for regional board members would be to allow the executive officers to adopt some, or all, waste discharge requirements. This would allow the Regional Water Board members to preserve hearing time for broader regional policy issues. Similarly, broad policy decisions should generally not be made in waste discharge requirements. Delegating the issuance of waste discharge requirements to the executive officer would help

ensure that the focus in waste discharge requirements is to implement existing state and regional water board policy.

QUESTION 3: Water Quality/Agricultural Runoff

What steps do you support to reduce water pollution from agricultural runoff?

The Los Angeles, Central Coast, and Central Valley Regional Water Boards have adopted comprehensive conditional waivers to control and assess the effects of discharges from irrigated agricultural lands. Regional Water Boards have made significant strides to implement their waiver programs and are committed to continue their efforts to work with the agricultural community to protect and improve water quality.

I support the direction of the conditional waiver program and am confident that with continued stakeholder and water board cooperative efforts we can protect and improve water quality and maintain the vitality of the agricultural industry in California. The key is to make certain that the overwhelming majority of agricultural discharges join the coalition groups so that their participation in the program is assured and their discharge data is included in the reports so that a complete picture is obtained.

How would you ensure that there is sufficient funding and staffing for the regional boards to perform their jobs in protecting water quality from these discharges?

To implement the waiver program, the State Legislature included 22 positions in the state budget for the 2004-2005 fiscal and ongoing years and specified that the funding for the new positions would come from new waiver fees. The State Water Board adopted a fee schedule for agricultural waivers in September 2005.

To assure sufficient funding for the irrigated agricultural waiver program, two actions must occur:

◊ The State and Regional Water Boards must develop work plans to determine staff and monetary needs to support the program. Once this is determined, a budget revision would need to be approved by the Legislature for any additional staff positions or increases to the budget. The State Water Board adjusts its fees every year to match the authorized budget.

◊ Participation by growers in the Central Valley needs to increase. Some coalition groups appear to have low participation rates and, hence, a low base of fee payers. A system in which a minority of growers support the program is not sustainable. Enforcement actions against nonparticipants will be necessary.

What actions remain to be taken by the boards to reduce agricultural discharges?

The Regional Water Boards and agricultural coalitions/groups should continue the implementation of their outreach, education, and monitoring and reporting programs. Currently, monitoring data is being submitted. Technical workgroups need to be formed to assess the monitoring data and to identify impaired waters. Where necessary, proven best management practices must be identified and growers should deploy them.

NOTE: Since the late1980's the Water Board has committed $98.4 million for loans and grants for 35 projects addressing irrigated agriculture drainage problems. Funding has come from three water bonds and the Clean Water State Revolving Fund [SRF]. In April 2005, the Board committed an additional $25.7 million for 40 projects using Prop 40 and 50 funds. During 2006 the Board expects to commit all remaining Prop 40 & 50 funds as part of our 2005-06 Consolidated Grants program. Funded projects address salinity reduction, irrigation management, tail water recirculation and treatment, dairy water quality improvements, and other Best Management Practices [BMPs].

QUESTION 4: Implementation of SB 810 (Burton)

What *actions has the state board taken to implement SB 810 (Burton) of 2003?*

SB 810 is a very powerful tool. It essentially permits one agency (Regional Water Boards) to step into the permitting process of another agency (California Department of Forestry [CDF]), and exercise a de-facto veto power over that agency's permit authority. Public Resources Code sec. 4582.71, a new section added to the Forest Practices Act by SB 810, would prohibit the California Department of Forestry and Fire Protection from approving a timber operation if the appropriate Regional Water Board (or, upon delegation, its executive officer), based on substantial evidence, finds that proposed timber operations will result in a discharge into a watercourse that has been classified as impaired due to sediment, that causes or contributes to a violation of the regional water quality control plan.

SB 810 grants authority to the Regional Water Boards; not to the State Water Board. The combination of the authority provided by sec. 4582.71 and the implementation of new general waste discharge requirements and general waivers of waste discharge requirements provide Regional Water Boards with much more leverage in the California Department of Forestry and Fire Protection's interagency review of proposed non-federal timber operations. The Timber Harvest Plan (THP) review team process allows Regional Water Board staff input to help result in THPs that require little additional water quality regulation. Section 4582.71 helps reinforce that dynamic by making it clear that, where points of view may differ, the water boards are the agencies that make the final call on what is necessary to comply with water quality laws. This also gives the timber landowners a greater impetus to resolve issues through the review

team process. SB 810 has had an important effect by delivering that message in some key instances, resulting in the withdrawal of THPs with unacceptable water quality impacts, in the face of a potential "SB 810 veto."

QUESTION 5: Ocean Pollution

What actions are you taking to reduce ocean pollution and ensure the continued viability of fisheries and recreational use along California's coast?

The State Water Board agrees that the reduction of ocean pollution is vital to continue the fisheries and recreational uses along California's coast. To that end, the State Water Board has established many programs that are specifically geared toward this goal:

(1) STORMWATER AND ASBS

The National Pollutant Discharge Elimination System (NPDES) Stormwater Program is one way that we are working to reduce pollution in urban, industrial, construction, and highway runoff that inevitably terminates in the ocean. Just one example of the State Water Board's commitment to protecting the ocean from urban runoff (and other threats) is enforcement of the waste discharge prohibition in Areas of Special Biological Significance (ASBS). The State Water Board designated 34 ASBS in the 1970's. The Ocean Plan prohibits waste from being discharged to ASBS unless the State Water Board issues an exception, with strict mitigating conditions. In 2005 we have held two workshops regarding ASBS in order to receive stakeholder input regarding new regulations that we hope to implement in 2006.

(2) RAPID INDICATORS

Monitoring is also a key ingredient to protecting coastal waters. The State Water Board, working with the Southern California Coastal Water Research Project, leads the nation in the development of Rapid Indicators as an approach to monitoring for pathogen contamination of beaches. Once implemented, this will provide an answer to whether a beach is contaminated by bacteria and pathogens in a matter of hours, rather than a whole day, which current test methods provide.

(3) VESSEL DISCHARGES

A state can have all or portions of its waters designated by U.S. EPA as no-discharge zones (NDZ) for vessel sewage. There are currently ten NDZs in California's coastal waters; however, historically, the primary emphasis has been on small vessels (e.g., recreational and fishing boats). Sewage discharges from cruise ships and other ocean going vessels potentially have a much greater impact on the marine environment. Some cruise ships can carry up to 5,000 persons (crew and passengers) and generate as much as 100,000 gallons of

wastewater per day. Over the past two years, the Legislature has enacted a comprehensive package of legislation to address discharges from cruise ships and ocean going vessels into California's marine waters. These pieces of legislation together effectively prohibit discharges of sewage, sewage sludge, graywater, oily bilgewater, hazardous waste, and other wastes from cruise ships and ocean going vessels. In some cases, such as sewage and sewage sludge, the legislation requires the State Water Board to determine whether federal approval is necessary for the state to prohibit discharges into California's marine waters, and if it is required, the legislation requires the State Water Board to seek federal approval. The State water Board has determined that federal approval is required and is submitting an application to the U.S. Environmental Protection Agency. In addition, the State Water Board staff is assembling the necessary information to request the U.S. EPA to create an NDZ for sewage discharges from ships in all California coastal waters.

(4) Sediment Quality Objectives

The State Water Board is leading the nation on developing sediment quality objectives for toxic substances, applicable to coastal bays and estuaries. The proposed objectives will include an implementation methodology and a scientifically defensible "multiple line of evidence" approach. The first proposed objective will address direct effects on benthic aquatic life and detrimental physiological responses in communities due to toxic pollutant concentrations. Another objective will cover indirect effects on human health and wildlife, due to the bioaccumulation of pollutants in the aquatic food web.

(5) Coastal Power Plant, Once-Through-Cooling

Section 316(b) of the Clean Water Act states: "the location, design, construction, and capacity of cooling water intake structure [for a power plant] reflect the best technology available for minimizing adverse environmental impact." The U.S. EPA has recently promulgated regulations that address new power plants (sec. 316(b) Phase I) and existing power plants with capacities of greater than 50 million gallons per day (sec. 316(b) Phase II). At issue is the control or mitigation of entrainment and impingement of marine aquatic life at once-through-cooling intake structures. In California, 21 power-generating facilities will be required to comply with the new federal regulations that will require the reduction of entrainment and impingement by up to 90 percent. The State Water Board is working on a specific statewide policy to address the impacts of once-through-cooling by these plants and held two workshops in 2005 to receive stakeholder input.

(6) Interagency Collaboration

Interagency collaboration is an important means for addressing complex pollution control issues. For example, the State Water Board is working with the Ocean Protection Council on joint priorities for funding ocean water quality projects. The Board is also working collaboratively with the Ocean Protection Council staff, and the staff from the Department of

Fish and Game, the California Energy Commission and the Coastal Commission to address the impacts of once-through-cooling by coastal power plants.

(7) STATEWIDE NPS POLLUTION CONTROL

In December 1999, the State Water Board, in its continuing efforts to control nonpoint source (NPS) pollution in California, adopted the *Plan for California's Nonpoint Source Pollution Control Program* (NPS Program Plan). This plan is part of the State's overall effort to reduce polluted runoff into all state waters, including coastal waters. The State Water Board provides supporting the implementation of statewide prevention and control of NPS pollution discharges and supports Regional Water Boards efforts including issuing permits (waste discharge requirements) or permit waivers or adopting basin plan amendments that address NPS discharges.

(8) ONSITE WASTEWATER REGULATIONS

In some areas, it has been estimated that as much as 30 percent of the total bacteriological loading to coastal waters is associated with onsite wastewater treatment systems (OWTS). The State Water Board is required to adopt regulations for OWTS pursuant to sec. 13291 of the California Water Code. We believe that the OWTS regulations will help eliminate pollution from these sources. Five workshops were held in 2005. The State Water Board has made the completion of this rulemaking a high priority and hopes to have new regulations in place by the fall of 2006.

(9) FUNDING CLEAN BEACHES AND COASTAL WATERS

The State Water Board established the Clean Beaches Initiative (CBI) Grant Program in 2001. More than $50 million of Proposition 13 and 40 funding has been awarded for the construction of diversions/source abatement projects, stormwater treatment facilities, sewage rehabilitation projects, and the implementation of best management practices. An additional $45 million of Proposition 40 and 50 funds will be awarded for CBI projects during 2006.

The 2005-06 Consolidated Grants effort includes $43.1 million in Coastal Nonpoint Source Pollution Control Program funds. The Board has reserved $10 million to fund ocean protection projects that meet the mutual priorities of the State Water Board and the Ocean Protection Council. Among other goals, these funds will be used to implement control strategies and to eliminate nonpoint source discharges to areas of special biological significance (ASBS) and their adjacent critical coastal areas.

QUESTION 6: Perchlorate Contamination

What actions are you taking to ensure Perchlorate water contamination will be cleaned up? Do the State Board and the Regional Boards have standards for the investigation and remediation of Perchlorate? If so, what are those standards?

The Water Boards joined with the Department of Toxic Substances Control to identify locations of perchlorate contamination and potential sources. The highest priority effort has focused on areas around known contamination of public and private drinking water wells. Potential responsible parties have been and are being identified, typically current and former Department of Defense (DOD) facilities and contractors as well as some nonDOD facilities (e.g., Olin flare manufacturing). The Water Boards, notably in the Central Valley, Central Coastal, Los Angeles and Santa Ana Regions, have taken aggressive enforcement actions against parties responsible for perchlorate contamination including issuance of cleanup and abatement orders, fines and requirements for supplying alternative water sources.

In the process of identifying potential sources of contamination, the Water Boards use the detection level (4 parts per billion) in public supply wells. For treating perchlorate contaminated ground water to provide water for drinking water use, the current "standard" is the Public Health Goal of 6 parts per billion. The State Water Board has provided approximately $6 million in funding (from the Cleanup and Abatement Account and Proposition 50) to treat perchlorate contaminated ground water from existing public supply wells in the Rialto-Colton area.

What actions would you take to clean up the Colorado River water to ensure that Perchlorate contamination is removed?

The source of the perchlorate in the Colorado River is the former Kerr-McGee perchlorate manufacturing facility in Henderson, Nevada. The legacy of perchlorate from the Kerr-McGee facility and the consequences of pollution of the Colorado River, the source of drinking water for millions of Californians and irrigation water for the Imperial Valley, cannot be understated. The cleanup of the Kerr-McGee facility is being overseen by the State of Nevada with assistance from the U.S. Environmental Protection Agency (U.S. EPA).

While the State of California has no jurisdiction over a cleanup occurring in another state, we must take seriously any impact on California's water supplies. State Water Board staff continuously monitors the progress of perchlorate cleanup at the Kerr-McGee facility as well as perchlorate concentrations in the Colorado River.

The U.S. Geological Survey (USGS) routinely samples the Colorado River upstream of the intakes for the water supply to Southern California. We are encouraged that recent perchlorate

concentrations in the Colorado River were measured below three parts per billion, down from over three times that level in 2000. The U.S. EPA expects perchlorate concentrations to continue to decline based on the success of the cleanup efforts at the Kerr-McGee facility.

QUESTION 7: Impaired Water Bodies/Total Maximum Daily Loads

Please describe those actions you will take to ensure that impaired waters are identified...

Prior to the current listing process there was no uniform policy directing the Regional Water Boards on how to identify impaired waters. In September 2004 the State Water Board adopted a "Water Quality Control Policy for developing California's Clean Water Act Section 303(d) list." The Policy sets a scientifically and uniform way to assess available data and uses sound scientific principles in determining whether a water body should be listed or removed from the list.

The Policy requires that all readily available data are used for the assessment. However, the quality of the data is considered and high quality data (data collected with approved quality assurance plans) is primarily used for decision-making. Lower quality data can be used in conjunction with high quality data when making a weight of evidence decision. A data solicitation is conducted for every listing cycle that is conducted every two years. Data that is not considered during one listing cycle can be considered during the next cycle.

Fact sheets are prepared for all waters where there is assessment data. The fact sheets are permanently associated with the water to allow the state to assess trends in water quality. The fact sheets are prepared and maintained regardless of the decision on listing or delisting the water body.

...and that effective TMDLs are developed, adopted and implemented and enforced in a timely and open fashion?

TMDLs are developed by the Regional Water Boards. Timely completion of a TMDL is dependent on a number of factors including, the complexity of the problem being addressed, the availability of good quality data and models, and the availability of contract resources.

The State Water Board adopted a TMDL guidance (TMDL Guidance "A Process for Addressing Impaired Waters in California") and Policy (Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options) in 2004. Two of the goals of the guidance are to provide a "desk reference" to TMDL practitioners and to provide openness to the environmental community, dischargers and members of the public on the processes used, and options available to the Regional Water Boards to develop and implement TMDLs.

The TMDLs are developed using sound science and are peer reviewed by independent experts through a contract with the University of California. The State and Regional Water Boards are committed to, and will continue to be committed to, an open public process for developing TMDLs.

The draft 2006 Clean Water Act sec. 303(d) list includes, for all listed waters, a TMDL completion schedule developed by the Regional Water Boards using best professional judgment and considering the water body significance (such as importance and extent of beneficial uses, threatened and endangered species concerns, and size of water body); degree that water quality objectives are not met or beneficial uses are not attained or threatened (such as the severity of the pollution or number of pollutants/stressors of concern) [Title 40 Code of Federal Regulations sec. 130.7(b)(4)]; degree of impairment; potential threat to human health and the environment; water quality benefits of activities ongoing in the watershed; potential for beneficial use protection and recovery; degree of public concern; availability of funding; and availability of data and information to address the water quality problem.

The California Water Code requires the Boards to provide a program of implementation for our TMDLs. The majority of TMDLs are required to be adopted and implemented through the Basin Planning Process. The public process and multiple approvals (Regional Water Board, State Water Board, Office of Administrative Law and U.S. EPA) required for TMDLs adopted into the Basin Plans often takes two years to complete. Technical uncertainties, complexity of the problem, lack of data and the stakeholder process can significantly increase the amount of time for adoption and implementation of TMDLs. The TMDL program does, however, encourage "early implementation" actions that will help "clean up" a problem prior to a TMDL being fully adopted.

Efficiencies in the TMDL program are allowing for "quicker" TMDL development. The program encourages the regions to learn from one another and where ever possible to copy the approach used in successful TMDLs. This approach of using "categorical" TMDL templates has, for example, been very successful in developing and adopting the Southern California bacteria TMDLs.

For example, how would you address TMDL implementation plans such as the one recently approved by the North Coast RWQCB for the Scott River, which relies on voluntary actions by dischargers to clean up pollution that has impaired the water body at issue?

The North Coast Scott River TMDL has not come before the State Water Board. However, the State Water Board, through the adopted TMDL Guidance and Policy, encourages voluntary action and regulatory actions by other groups to proactively clean up California's waters. However, these actions must conform to State Water Board regulations including the nonpoint source enforcement and implementation policy (Policy for Implementation and Enforcement of

The Nonpoint Source Pollution Control Program) which requires all discharges to be regulated through permits, waivers or prohibitions. The Porter-Cologne requires that there can be no unregulated discharges, whether from point or nonpoint sources, to waters of the state.

"Voluntary" action can be useful in certain TMDLs where solving the problem may require actions that are not part of the water boards "traditional" regulatory actions. Examples include, restoration of historic logging areas and planting of riparian vegetation where the previous actions were done in accordance with California laws. The use of a "cleanup and abatement order" to require new landowners, or volunteers, to plant vegetation along a creek could be considered "heavy handed." However, the Regional Water Boards should, and the State Water Board will continue to encourage the use of mitigation measures, which could include bank stabilization and the planting of riparian vegetation, when approving stream alterations permits and other actions.

The TMDL policy requires, where "voluntary" and third party actions are used to implement the TMDL that the TMDL include assurances that the actions will successfully meet the wasteload and load allocation, includes a requirement for monitoring to be able to measure success, and a time frame for the implementation including a date on which the Regional Water Board will assess the program of implementation and determine if the "voluntary" or third party efforts are successful or if the region needs to use its direct regulatory processes (such as cleanup and abatement orders, cease and desist orders, etc).

QUESTION 8: State and Regional Water Boards Enforcement Program

Do you believe that the state and regional water board enforcement programs are at appropriate levels or do they need to be improved?

No, they are not at appropriate levels, but improvement is currently underway. The State Water Board has made it clear in all of our hearings and communications that enforcement is of the highest priority to the State and Regional Water Boards. In order to accomplish this the State Water Board is elevating the importance and profile of our enforcement effort. The Enforcement program now reports to the Executive Director, who is working to improve enforcement resources.

What specific actions will you take as a state board member to address these concerns about enforcement and accountability at the state and regional water boards?

The State Water Board has requested that the Enforcement Program report to the Executive Director and have created an Office of Enforcement. The Enforcement Program is undergoing

reorganization that includes being headed by an attorney with prosecutorial expertise. Additional staffing will include a combination of attorneys and technical staff.

The Water Board has established dedicated enforcement units at all Regional Water Boards and is developing enforcement priorities for Board review and approval.

The new Office of Enforcement will revise the Enforcement Plan to reflect the priorities approved by the Board and will work with Cal/EPA and the other Boards, Departments and Offices of Cal/EPA to address cross-media enforcement.

Will you seek funding or legislative changes to implement those initiatives?

As part of its process for revising the Enforcement Plan, the new Office of Enforcement will evaluate the current enforcement systems at the Water Board to (1) identify ways to make our current enforcement programs more efficient, (2) identify the staffing levels at the state and regional board necessary to effectively implement the enforcement plan, and (3) identify any statutory changes or additional enforcement tools that are needed. The State Water Board will consider the recommendations and pursue any necessary changes through the appropriate processes.

What timetable do you envision for completing those initiatives?

The enforcement re-organization is underway and will be completed in the next month. Each of the initiatives will begin immediately. Prioritization and revision of the Enforcement Plan will be completed in April. The State Board is developing a 5-year vision for enforcement improvement with annual reviews of progress and accomplishment.

QUESTION 9: Numeric Limits in Stormwater Permits

Do you support the use of numeric limits on stormwater discharges? Please explain your reasons for your position.

I understand that the State Water Board's Chief Counsel (Michael Lauffer) has advised Ms. Sabelhaus that whether to include numeric effluent limitations in stormwater permits is an issue in a pending adjudicative proceeding before the State Water Board. Pursuant to Mr. Lauffer's advice, to avoid prohibited ex parte communications, and to preclude someone attempting to disqualify me for prejudging the matter, I will refrain from answering questions related to the substance of the pending proceeding. My decision to support or to oppose numeric effluent limitations will ultimately be based on the evidentiary record before the State Water Board.

The Water Boards are committed to making the stormwater program perform better when it comes to the permittees' impacts on water quality and beneficial uses. This is an important distinction to make -- while numeric effluent limits in stormwater permits may make sense for some beneficial uses (like those impaired by chemical constituents), other measures may make more sense for other beneficial uses that are most threatened by urbanization and stormwater discharges (like habitat-based uses, flood storage, and uses driven by physical and biological parameters). In order to assist the Board in addressing the issue of numeric limits, the Board organized a panel of experts to provide input on the feasibility of numeric limits in stormwater permits. The Panel was asked to consider the differences between municipal, industrial and construction activities in responding to the question of numeric limits. This information will be helpful in assessing the viability of numeric limits for different types of discharges. It should be noted that there are some individual NPDES stormwater permits that do contain numeric limits for discharges. Most prominent of these are the refinery/tank farms located in the Los Angeles area. In these instances where a Regional Board has adopted numeric limits, there is a significant body of knowledge upon which to base the limits.

Nationally, there are a number of stormwater permits that include "benchmarks" for basic parameters. The benchmarks are not numeric limits, and are not intended to be used as compliance/enforcement tools. Rather, they are used to provide feedback to the facility operator regarding the effectiveness of the programs being implemented. The best example of this would be the U.S. EPA multi-sector general industrial stormwater permit.

Does the board plan to take action to follow up on its September workshop to adopt numeric limits for stormwater permits? What is your timetable for this action?

The State Board does plan to follow up on the September workshop. The Board is now awaiting comments and conclusions from the stormwater panel of experts as to whether or not it is feasible to develop numeric limits for inclusion in stormwater permits. As stated already, the Water Boards (both staff and Board members) are committed to seeking new ways to make the stormwater program more effective at protecting California's beneficial uses from stormwater discharges. In some cases this may be done most effectively using numeric limits or benchmarks, while in other cases it may be most effective to develop other drivers and measures to achieve the overall goals of the program. There is no specific timetable for future action at this time.

QUESTION 10: Surface Water Ambient Monitoring Program (SWAMP)

Do you believe that the SWAMP is adequately funded?

No. The total SWAMP budget for 2005-06 is $6,091,316 which includes $3.723 million for contracts and 17.2 staff positions. There is consensus among all stakeholders that the current program is under funded. This consensus was demonstrated at the December 9, 2005, Board workshop where the findings and recommendations of the external scientific review panel evaluating SWAMP were presented as an information item. "Inadequate funding" was a preliminary finding of this external review panel.

It should be noted that SWAMP is currently funded at approximately 7 percent of what was estimated in the November 2000 Report to the Legislature. With the existing budget, the program has focused on enhancement and coordination of existing monitoring efforts and the gradual development of the necessary "infrastructure," including a strong quality assurance program and a data management system, for a comprehensive and comparable monitoring program.

SWAMP has balanced the rate of program development against the need for regional monitoring. Most regions are implementing a resource-limited targeted design that provides information on existing conditions in watershed assessment units. The statewide monitoring has not been implemented as designed.

If not, what is an adequate level of funding for this program?

Our vision is to provide the support needed to implement a coordinated and comprehensive monitoring and assessment program. To accomplish this will require significant additional resources. Although the Board had previously identified in a November 2000 Report to the Legislature that it would cost between $59 million and $115 million per year and include 87 to 132 staff positions to implement SWAMP, the U.S. EPA recently approved the Board's ten-year implementation strategy for SWAMP, which estimates that complete implementation of the Strategy will require an additional 40 staff positions and $35 million in contract funds. This is substantially less than the original estimate and is possible by implementing the efficiencies outlined in the strategy.

How should SWAMP be funded? (e.g. Cleanup and Abatement fund, discharge fee revenues?)

SWAMP should be funded with an adequate and stable funding source. Other states fund their monitoring and assessment efforts in four ways: use of state general funds, use of federal

106 funds, discharger fees, or user fees. SWAMP was originally funded using general funds, but is currently funded by a monitoring surcharge on waste discharge permit fees.

Other funding options include use of Cleanup and Abatement funds, Supplemental Environmental Project Funds, or assessing a fee on the many waivers the Water Board issues, for example for irrigated agriculture.

Are there opportunities to work with other state and regional water agencies to leverage their monitoring activities to enhance the data the Water Boards are developing?

Yes, and SWAMP is actively engaged in this area. The SWAMP Strategy, outlined in "*A Comprehensive Monitoring and Assessment Strategy to Protect and Restore California's Water Quality,*" envisions four overarching tactics to promote an efficient increase in the amount of usable water quality information that is available:

◊ Improve and strengthen SWAMP so that all State Water Board programs generate scientifically defensible, comparable and comprehensive information by using a monitoring framework and data standards consistent with the guidance developed by the National Water Quality Monitoring Council.

◊ Develop and promote the use of multiple monitoring tools such as statistically based surveys, judgmental surveys, predictive modeling, risk assessments, expert systems and newer information and monitoring technologies.

◊ Continue working with monitoring programs currently coordinated through the California Environmental Data Exchange Network (CEDEN) and hosted by the Department of Water Resources. CEDEN is a statewide cooperative effort of various groups involved in the water and environmental resources of the State of California. Its purpose is to allow the exchange of water and environmental data between groups, and to provide access to the public. Participation allows SWAMP to increase data comparability, increase the potential for true collaboration with other entities collecting ambient water quality information, and make data available to the public.

◊ Build stronger partnerships with agencies, watershed groups, volunteer monitors and others to facilitate the sharing of information, the collection of comparable data and the use of monitoring tools. This includes working closely with the newly formed Nonpoint Source Tracking and Monitoring Council.

The SWAMP Strategy is consistent with the intent of the proposed SB 1070 and the preliminary findings of the ongoing external scientific review of the program.

QUESTION 11: Groundwater Protection – Groundwater Ambient Monitoring and Assessment (GAMA)

Do you believe the board should take action to protect ground water quality beyond the current ground water monitoring effort? If so, which actions should the board take?

The Water Boards have an extensive ground water quality protection program. Each Regional Water Board basin plan includes a ground water quality component that sets standards/water quality objectives for ground water. Basin plans also include prohibitions of certain waste discharges, such as septic tanks in areas with significant problems. Implementation of the basin plans includes issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminant sites (e.g., discharges without requirements such as spills and leaks). The first WDRs for landfills were issued in the 1940's. Continued regulation has resulted in over five thousand currently active WDRs for discharges of waste to land. The issuance of WDRs for these programs is supported by over 140 staff.

Discharges of waste that were never authorized are subject to cleanup or abatement. The Board cleanup program has closed over 30,000 underground storage tank (UST) sites with 15,000 UST sites under investigation and cleanup, and closed 750 nonpetroleum contaminant sites with 1600 sites under investigation and cleanup. The contaminant site cleanup effort is supported by about 450 staff at the Water Boards.

The State Water Board's Underground Storage Tank Cleanup Program reimburses over $200 million annually for investigation and cleanup at UST sites. In addition to ground water monitoring and cleanup and setting of WDRs, the State Water Board has other significant pollution abatement activities. State Water Board regulations require WDRs to include containment of waste and specific ground water monitoring for higher threat waste discharges. The State Water Board's UST Leak Prevention Program is a national model in setting standards for tank design including secondary containment. Several of the UST Leak Prevention Program's recent successes were adopted by Congress in this year's Energy bill.

Other significant State Water Board actions include:

◊ The Board recently adopted requirements that allow for more rapid degradation of waste in landfills to minimize risk to ground water quality for future generations.

◊ The State Water Board sponsored legislation requiring the most environmentally protective design in the nation for new USTs.

◊ The Water Board adopted regulations for delivery prohibition (red tags) for significant UST violations. Congress adopted a similar provision in this year's Energy bill.

◊ The State Water Board will hold a salinity workshop January 31, 2006, to discuss options to address salt issues in ground water and surface water in the Central Valley. Following the workshop the State Water Board will consider what policy or other actions its should take to protect water quality in the Central Valley from the accumulation of salts.

◊ The State Water Board anticipates adopting regulations for discharges from septic tanks in the fall of 2006.

◊ The State Water Board developed and is implementing a protocol for prioritizing and conducting perchlorate investigations and cleanup at military facilities.

◊ The State Water Board has included analysis for emergent contaminants including pharmaceuticals as a part of the monitoring schedule for wells being sampled by the U.S. Geological Survey under the GAMA effort. In addition, several Regional Water Boards have included analysis of emergent contaminants at cleanup sites and landfills.

What actions do you support to ensure adequate funding for the ground water ambient monitoring assessment (GAMA) program?

GAMA is a program nationally recognized for its innovative and comprehensive approach to statewide assessment of ground water quality. No other program in the nation uses age-dating and low level detection (parts per trillion) monitoring for assessing ground water quality.

Trends in ground water quality are often only evident over a time period of decades. GAMA, which implements the statewide comprehensive monitoring program developed pursuant to AB 599 (Liu, 2001), must be a long-term program with a stable funding source for continuing monitoring and assessment. Fifty million dollars from Prop 50 is being used to contract with the U.S. Geological Survey to monitor and assess the highest 116 priority ground water basins. GAMA is also annually supported by $1.9 million in waste discharge permit fees (WDPF) associated with the Ambient Monitoring surcharge. The WDPF fees support State Water Board staff as well as focused ground water studies including the voluntary domestic well monitoring program.

The $50 million from Proposition 50 provides an adequate level of funding for the GAMA program for several years. During that time, the State Water Board will assess the possible funding sources and take appropriate action to ensure that the program continues to develop.

QUESTION 12: Brownfield Cleanup

What is the status of the board's efforts to ensure these funds are distributed with all appropriate speed to clean up brownfields?

The State Water Board requested and received an appropriation of $10 million of these funds for the 2005-2006 budget year. Emergency regulations for the program have been developed and were adopted by the Board on October 20, 2005. The regulations were approved by the Office of Administrative Law and became effective on November 28, 2005, and the application process is underway. Initial grants will be issued in spring 2006.

When will parties be able to apply for these cleanup funds?

Parties can apply for funds at any time. A downloadable application package was posted on the Water Board's website in late November 2005, and a notice announcing that applications may now be submitted was sent out to all appropriate e-mail lists at about the same time. To allow parties time to prepare a complete application and provide for fairness to all potential applicants, the emergency rules provide for an initial 45-day application period during which all applications received will be deemed as having been received the same day. The initial filing period ends on January 12, 2006.

Why has it taken so long to make these funds available?

We believe we have made very good progress in this program in the short time since AB 1906 became law on January 1, 2005. While the bill provided for $10 million to become available immediately, the funds were subject to appropriation, which didn't occur until July 2005. Also, the statute is very general, and regulations were required to establish the ground rules for the program, including establishing the conditions for eligibility, the maximum size of a grant, priority criteria and administrative procedures.

What steps is the board taking to prioritize and expedite the identification and cleanup of brownfields in urban areas so that those lands can be "recycled" and put into productive use?

As part of the FY 2005-2006 budget, the State Water Board sought and was approved for an additional 9.5 PYs to address the brownfields workload as part of our Spills, Leaks, Investigations and Cleanup (SLIC) program. With these resources, a brownfields coordinator was established at the Division of Water Quality, and the remaining PYs were allocated to the regions based on the region's share of brownfields work. In addition, the State Water Board has negotiated an agreement with DTSC to improve coordination of cleanup oversight.

QUESTION 13: Water Rights

Please provide a status report of the board's efforts to reduce or eliminate the backlog in issuance, adjudication and enforcement of water rights granted under the law.

Enforcement of water rights is a discretionary action taken on a case-by-case basis. There is no way to estimate the number of potential violators throughout the State without conducting detailed investigations.

There are three types of water right adjudications: (1) statutory or stream system adjudications, which are initiated by outside parties; (2) court reference adjudications, which are initiated by the courts; and (3) ground water adjudications which can be initiated by the Board if certain factual determinations have been made. There are no adjudications currently pending at the State Water Board. The State Water Board also conducts adjudicatory water right hearings. Hearings on water right matters are scheduled on an "as-needed" basis. Upon determination of the need for a hearing, a hearing is typically scheduled within a month.

The State Water Board has implemented steps to reduce the "backlogs" in processing water right applications for permits, petitions for changes and extensions of time, and issuance of water right licenses. A review of historical information shows that the backlog in processing water right applications has been reduced by about 25 percent since the late 1970's. According to the *Governor's Commission to Review California Water Rights Law, Final Report, December 1978,* "Recent administrative reforms on the part of the Board have reduced the backlog of unprocessed permit applications, but even with such efforts, over 800 applications remain unprocessed." Since October 2003, the State Water Board has reduced the number of pending applications from 719 to 617 (as of November 30, 2005). Not all of these applications are considered "backlog." For instance, there are 23 applications pending that propose water diversion from the Truckee River system. These applications have been pending since the early 1970's. For obvious reasons, they may not be acted upon until the states of California and Nevada agree to an interstate allocation of the waters of the system.

In general, the most effective step implemented was making applicants and permittees more responsible in the water right process. Before a water right permit or order approving a change can be issued, the State Water Board must complete three steps. First, the State Water Board must comply with the California Environmental Quality Act (CEQA). Second, the State Water Board must determine that the proposal will not adversely affect legal water users. Third, the State Water Board must consider the effects of the project on public trust resources and mitigate those effects if feasible. In addition, if a permit is being issued, the State Water Board must find that water is available for appropriation.

In the past, the State Water Board conducted much of the work associated with making these findings itself, including preparation of many CEQA documents. Because application fees were kept artificially low due to significant General Fund support for the program and because a water right priority is determined by the date an application is filed with the State Water Board, there was significant incentive for people to file an application, even if they had no intent to actively pursue a water right application. As a result, applications would sit for years with little or no action being taken to process them, other than occasional status reports. Similarly, until the late 1980's the State Water Board had limited administrative enforcement authority. As a result, parties who received a permit or license would make changes to their project without seeking approval from the State Water Board.

Pursuant to Legislative direction, the water rights program is now predominantly fee supported. The State Water Board set the fees through the adoption of emergency regulations. The State Water Board has set the fees in such a manner as to discourage the filing of spurious applications and the construction of illegal projects. In addition, in the 2001 and 2002 Legislative Sessions, the State Water Board sought, and the Legislature and Executive Branch have approved, more effective enforcement authority for State Water Board in its administration of water rights.

Most of the reductions in backlog have been a result of more stringent implementation of existing statutory requirements. Applicants and petitioners must now submit with their filings all required information and fees, or the State Water Board will not accept the submittal. Applicants and petitioners must also provide sufficient information to demonstrate that water is available for appropriation before an application will be accepted. In 2004, the State Water Board's Division of Water Rights imposed an internal goal of reviewing water right applications within 24 hours of their receipt, far earlier than the statutory requirement. Applicants and petitioners have always been legally responsible for the cost of CEQA document preparation; however, in the past the State Water Board's practice was to prepare many of these documents at no cost to the applicant. This practice was implemented because most applicants are seeking only small amounts of water, and the cost for an applicant to hire an environmental consultant to prepare a document for these projects runs about $20,000. The State Water Board no longer assumes the cost of document preparation for small projects. The State Water Board also takes much more timely action to reject and cancel applications that do not meet the statutory requirements. These new practices are successfully reducing the number of applications formerly filed merely to hold priority for speculative projects, and the overall backlogs in permitting, petitions and licensing.

Despite these improvements, the amount of time that is required to issue a water right permit has increased since 1980. The *Governor's Commission to Review California Water Rights Law, Final Report"* indicates that in 1978 many applicants waited for three or more years before receiving a permit. The State Water Board currently has many applications that have been pending for five or more years.

In 1997 and again in 2002, the State Water Board conducted stakeholder workshops to solicit comments and suggestions on how to improve its water right processes. As a result, the State Water Board has made changes to its practices in processing water right applications and petitions. Since 1995, the State Water Board has worked with the Department of Fish and Game and federal fishery agencies to develop criteria that can be used to readily identify water right projects that are highly unlikely to impair aquatic resources. Pursuant to the requirements of AB 2121, which became effective January 2004, the State Water Board is in the process of promulgating instream flow requirements to be used in the administration of water rights for rivers in Northern California coastal counties, which is where most pending applications are located.

In the past year, the State Water Board also prepared a feasibility study to determine the benefits of upgrading its water rights computer system. The system that is currently being used was developed in 1995 based on system design that was implemented using a mainframe computer prior to 1980. The State Water Board believes that improving its computer system will result in efficiencies that can be used to further reduce the backlog. Its study is currently under review.

What actions has the State Water Board taken, and how much does it spend, to monitor and enforce water rights to ensure that the waters of the state are not over-appropriated?

In 2002, the State Water Board sponsored amendments to the Water Code to streamline the Cease and Desist Order process used for the correction of threatened or actual water right violations. Under previous statutory requirements, the State Water Board had to issue a preliminary Cease and Desist Order following notice to the affected party. Only if the requirements of the preliminary action were not met could the State Water Board issue a final order. The State Water Board could impose a maximum civil liability of $500 for each day of unauthorized diversion. However, under the amended Cease and Desist Order process, the State Water Board can now impose liability of up to $1000 per day for violations of a Cease and Desist Order.

The State Water Board has stepped up its enforcement of unauthorized diversions and water right violations. In 2005, the State Water Board took enforcement action against two large water districts in Mendocino County and continues monitoring for compliance with the final orders. The State Water Board also held hearings on proposed enforcement orders against the federal and state water export projects in the Sacramento-San Joaquin Delta and against a large community service district in Southern California. The State Water Board plans to consider proposed orders on these cases in January 2006. The estimated cost solely for the Division's prosecutions of the two pending enforcement actions in FY 2005-2006 is $450,000. The State Water Board estimates that it spent an additional $250,000 on hearing expenses related to the two enforcement actions.

This past year the State Water Board initiated a proactive water right investigation of over 700 water storage facilities located within the Russian River watershed in Sonoma County that are not authorized by a known water rights. When the Board completes its field inspections, we anticipate that 200 of these storage facilities will be found to be unauthorized diversions of water. The Division is creating an enforcement priority list of all potential enforcement cases from this investigation. The State Water Board will be responsible to conduct hearings on any contested enforcement initiated by the Division. It is likely that hearings will be consolidated and scheduled simultaneously so that consistent and expeditious decisions are made on all cases with similar issues.

The Division's Enforcement Section consisting of the Complaint, Licensing and Compliance units perform statewide field inspections to review complaints, monitor compliance with permit and license terms and conditions, issue licenses, and conduct special watershed investigations. Last fiscal year the Enforcement Section was supported with about $2.2 million.

It has been reported that, due to funding shortfalls and lack of staff, the Division of Water Rights is unable to act upon complaints in a timely or adequate fashion. Please provide information on the number of complaints received, the State Water Board response, and the average time frames for responses.

In response to similar concerns raised in 1997, the Board conducted a thorough review of the water right complaint program. That review identified that the State Water Board was mostly timely in responding to complaints, averaging about nine months. The review also acknowledged that larger waste and unreasonable use or public trust complaints required more time.

During the nine years since that review, the State Water Board received 387 water right complaints. Eighty-two percent, or 316 of these complaints, were timely processed to closure. Another 96 complaints received prior to January 1, 1997, were also closed during the period with the assistance of other program staff. The average time to close incoming complaints has remained approximately the same, about nine months.

Complaints filed with the State Water Board are becoming more complex and will inherently take time to finally resolve. Additionally, final resolution of some water right complaints must wait for a court decision or a settlement between parties that elected to negotiate an independent resolution of the issues. Finally, any enforcement taken as the result of a complaint investigation greatly extends the closure date. For example, the State Water Board recently held a hearing on an enforcement initiated following a water right complaint investigation. Final closure of that complaint may take years to exhaust all legal remedies available under law.

Thank you again for the opportunity to present my goals and objectives as a member of the State Water Resources Control Board. It is an honor to serve on the State Water Resources Control Board and it is my hope that the responses to the questions have both illuminated the mission of the Board as well as my commitment to that mission. I look forward to meeting Senator Perata and his colleagues at my confirmation hearing.

Sincerely,

Gerald D. Secundy
Vice Chair

526-R

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1:36 P.M.

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Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

MEMBER ABSENT

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

ALSO PRESENT

JERILYN R. HARRIS, Member
Teachers' Retirement Board

SENATOR WES CHESBRO

ROGER A. KOZBERG, Member
Teachers' Retirement Board

SENATOR KEVIN MURRAY

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to start as a subcommittee. We have one absence today. Senator Cedillo is in New York working on a homeless problem related to California.

Why don't you come on up, Mrs. Harris, and join him, if you don't mind. If you do, I completely understand.

SENATOR CHESBRO: Mr. President, we haven't perfected the art of filibuster that they have in the big Senate back in Washington.

I have several additional reasons for wanting to introduce Jeri Harris to you as the member of the STRS Board representing retired teachers. One of them is that she's my constituent, lived a long time in Ukiah. Has educated a whole bunch more of my constituents in her 27 years of teaching biology and science.

But also, as I think many of my colleagues are, I have a dog in this hunt, you might say, because my mother's a retired teacher, retired a long time ago, is one of those that has a very, very low pension. But partly, thanks to the supplements that the Legislature has approved and STRS has administered, she's getting by.

But I think it's a very important board. Our teachers deserve a decent retirement, and I think Jeri Harris will be a great representative of the retired teachers.

After retiring from Ukiah High School in 1998, she served as the Interim Director of Teacher Education at the UC Graduate School of Education. She is an active member of the

Mendocino County community, and has served on a number of different state committees and commissions, including the Commission on Teacher Credentialing.

In spite of the fact that she's from Mendocino County, she has a very broad statewide perspective as a result of the work that she's done in a variety of statewide capacities, and I think she'll do a great job of making sure that our retired teachers are well represented on the STRS Board.

Thank you for hearing me out today. I strongly encourage her confirmation. Thank you.

CHAIRMAN PERATA: Thank you, Senator. Thank you for being here.

I also want to acknowledge that my legislative director's wife, Rose, who's Rose Elliot now, you taught her. And she has nothing but glowing things to say about you. You caused an interest in science that she never had before. That's high testament as far as I'm concerned.

MS. HARRIS: Thank you so much, Mr. Chairman.

CHAIRMAN PERATA: Welcome.

There are now two of us. We're just flush.

SENATOR BOWEN: We are not, however, a full house.

CHAIRMAN PERATA: Now we have a quorum; Senator Ashburn makes a quorum.

Why don't you tell us a little bit about yourself, and what you're doing.

You had some very interesting things to say in

your goals. Welcome.

MS. HARRIS: Thank you, Mr. Chairman and Senators.

Yes, staff, I'm delighted to be here though a little nervous. I've been speaking in front of people, particularly students, for well over 30 years, but I've never had the butterflies I have right now.

CHAIRMAN PERATA: Just think of us as teaching a slow class.

[Laughter.]

MS. HARRIS: As only a former civics teacher could say.

I grew up in Southern California. I was one of the original Valley girls -- pony tail and surf board. Went to school at U.C.L.A. both undergraduate and graduate. Always wanted to go into teaching. I used to teach the neighborhood kids. I had my own little schoolroom.

I never quite understood just what I was biting off until the first time I was in a classroom. I was recruited by Beverly Hills while I was still in graduate school at U.C.L.A. and started out teaching a combination of science and PE. Loved the science, hated the PE, and wound up concentrating on the area of biology, something that is still a deep love for me.

I was very fortunate to be able to serve five years in Beverly Hills and then retire from teaching, quite pregnant, sure that I would never again darken a classroom. We lived in Orange County. Had two children, both of whom are here

today and I'm very proud of them, my daughter Kelly Wong, who is a brand-new mother again. She is the mother of my grandson, Conner, four, and they have just adopted a baby boy who was turned in under some wonderful legislation in your district, Mr. Chairman, at the age of about an hour. And my daughter and son-in-law have adopted him, and he's my new grandchild, Scotty. He's a month old now. What a Christmas present.

CHAIRMAN PERATA: Why don't you introduce them.

MS. HARRIS: All right. If they would stand, please. This is my daughter Kelly. She is a fifth grade teacher in Pleasanton Unified School District. And my son Ryan, who is Vice President of Marketing and Business Development for Domain Chandon Winery.

They are both graduates of California schools. My son, UC Berkeley in biology, and my daughter, Cal Poly, San Luis Obispo. I'm extremely proud of them both.

CHAIRMAN PERATA: That's just wonderful.

MS. HARRIS: We moved to Mendocino County from Orange County because my husband and I wanted to raise our children in a different environment. We wanted to get the clean air, and the room to run and have horses, and swim, and fish. It's a little more difficult in Southern California, certainly more so than it used to be when I was growing up there.

I wound up being called in to take over for a teacher at our middle school, Homilita, with about twelve hours notice, and all of a sudden I was back in the classroom full time and never then left again until I actually was loaned out

to go to UC Berkeley and to the Department of Education, and then to complete my career in 2002.

I had a real challenge and opportunity to bring new biology into our community. I got turned on by a recombinant DNA course at UC Davis when biotechnology was really in its infancy, and I was able to actually bring that technology and everything that goes with it into my classes. And I taught both my son and daughter, as well as over 3,000 other students. And they did some remarkable things, won some really prestigious competitions from our little world community.

It gave me actually a chance to speak for teachers in ways that I wouldn't have before. I served on two sunset review committees on categorical programs. I chaired one.

I was appointed by Governor Deukmejian to the Commission on Teacher Credentialing, and I became only its second teacher chair in the commission's history. Was able to bring, I hope, a lot of reality to the credentialing process. I'm not real sure what's happened since, but we did do -- we set a lot of really good policy, developed California New Teacher Project, Beginning Teachers Support and Assessment, SB 1969, that gave teachers an opportunity to train in ways for our changing classrooms. And I was able to work very closely with the two teacher unions to be able to bring this particular part of teacher preparation a sense of reality and to fruition.

I was very lucky to be able to work with both Senators Hart and Bergeson on some of the legislation that came out of the Legislature several years ago.

I was then appointed by Governor Wilson to the Standards Commission. I'm not real sure whether I appreciated that, or whether I felt like I was there to try to bring the teacher voice. It turned out being far more political than I would have wanted it to, but it served a real purpose, particularly for students who were not getting as rigorous an education as California really should be demanding of our students.

I then was home and teaching, teaching high school and loving it. I actually had a back injury years and years ago, and it wound up putting me into a situation where Jean Garcia, who is the Dean of the Grad School of Education at UC Berkeley, asked me to come and serve as an Interim Director of Teacher Education there at Cal for almost three years, and then in Sacramento with the California Department of Education. And I was able to retire still out of Ukiah Unified from that position in 2002.

Actually, I was probably the most surprised person out there when I got a call from the Governor's office. I had put in one of those 10,000 applications years and years ago with the Schwarzenegger administration, and then I was invited to Sacramento, interviewed with the Governor's appointment staff, and was offered a position on Cal STRS. And what an education that has been for last eight months.

So, here I am.

CHAIRMAN PERATA: I don't know why you think you're qualified to talk about teaching.

[Laughter.]

CHAIRMAN PERATA: Well, it's delightful to have somebody with the breadth and depth of your experience doing that.

I was struck by something that you pointed out in your response, and that is about 50 percent of California teachers retire with no health coverage.

MS. HARRIS: That's right.

CHAIRMAN PERATA: And then you had some possible strategies to address that.

Would you talk a little bit about that?

MS. HARRIS: I'd be honored.

There's a pool of retired teachers in California, and I think it's actually considerably over 50 percent, who do not have health insurance once they retire. If those teachers had decided to go into secretarial positions with the state, or cities, or whatever, they would have access to health care.

I think that that, just the numbers of people who would be seeking Medi-gap policies or whatever, could give us the opportunity to compete for a variety of insurance plans or something to help to deal with the fact that increasing costs in health care are taking more and more out of the pockets of retired teachers.

I think at the very least it's something we should explore, and our staff has been very receptive to that. They have done some work in looking at -- I think Ed Dermond could say somewhere around 57 percent of California teachers who lack health insurance once they retire.

CHAIRMAN PERATA: Good, thank you.

We have a couple of fiduciary boards: Franchise Tax and PERS. Both have verbatim minutes, and I don't believe STRS does.

MS. HARRIS: Excuse me, both have what?

CHAIRMAN PERATA: Verbatim minutes. I don't know what that means, but I think it's Latin.

And I think it would be useful to have that consistent with both retirement systems. So, it's something you could take under consideration.

Any other Members want to be as pithy and insightful as I've just been?

SENATOR BATTIN: I don't believe that's possible.

[Laughter.]

CHAIRMAN PERATA: Thank you. I'll take that as a motion.

SENATOR BOWEN: I don't have my pith helmet.

[Laughter.]

SENATOR BOWEN: I want to thank you for your comments in Number Three, where you point out that a change in retirement options will have a disproportionate impact on women in particular, because we often take more time out of our career for child rearing, and we get lower salaries.

Of course, that difference is exacerbated if we go to a defined contribution plan.

This is a broken record that I've been playing over and over again, and you are the first person to appear before this Committee who has raised this issue without having been asked about it by yours truly. So, thank you for that.

And I look forward to working with you on protecting and dealing with this differential at the same time as we're addressing the shortfall.

I also think that if you did a survey of Californians about the issues you raise about who has health benefits after they retire, that people would overwhelmingly register their belief that all teachers retire with health care. So, I think we have some work to do to educate the public about how the system actually works for teachers.

The other issue that I want to just ask you briefly about is the Social Security reduction. I probably hear more about this than any other issue. It is, again, as you point out -- and you raised a lot of good issues in this letter, which I really appreciate -- if we're asking people to go into teaching from another profession, and we reduce their Social Security benefits after they have done that, it's hard for me to understand how we're doing ourselves any favors, not to mention the teachers.

Do you have any thoughts about how we might go about changing that? Let's say we didn't have an actuarial deficit for starters. What would you think we might do?

MS. HARRIS: I think, in fact I know, California Retired Teachers Association -- and Ken Hewitt, who's in the audience, is not only a Ukiah teacher, a former teacher, a retired teacher -- but CRTA has worked diligently on this issue. But it's a bigger issue than just CRTA. It's something that needs to be grappled with, I believe, by the full Legislature and Governor.

I'm sure that most people in California don't realize that two out of every three Social Security dollars is written off if you are getting a retirement from Cal STRS. It makes no sense to me at all. It's about time we put our heads together and see what we can do to help CRTA, and to raise this issue nationally, as it has been. But it doesn't seem to be going anywhere.

SENATOR BOWEN: I think we have some real work to do on that issue. We look at the shortage of teachers, and the number of kids coming into our schools, and without bringing in some teachers who've done other things, or who plan to do other things in addition to teaching, I just don't know how we're possibly going to make this work.

MS. HARRIS: And Senator, the majority of our teachers now are coming into the profession from other jobs, either after they've raised a family, or they decide that they want to do something that is more fulfilling, and they go into teaching. They bring a wealth of experience to our kids, but we are penalizing them for it.

CHAIRMAN PERATA: Not smart.

MS. HARRIS: Not smart. I'm glad you said that.

SENATOR BOWEN: Thank you.

CHAIRMAN PERATA: We have someone in the back, where I used to sit when I was in school, who is the new Appointments Secretary of the Governor's office, Timothy Simon. Welcome. Thank you for stopping in.

MR. SIMON [FROM THE AUDIENCE]: Thank you.

CHAIRMAN PERATA: So far she's doing great.

Any other questions? We did have a motion.

Anybody here -- I'm sorry, I keep forgetting to do this. I don't want anybody to speak against this nominee. So, anybody here in favor?

Seeing none, call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

MS. HARRIS: Thank you so much. I'm honored, and I won't let you down.

CHAIRMAN PERATA: I know you won't. Thank you.

Roger Kozberg. Come on up, Kevin. Senator Murray is going to do us the honor of introducing Mr. Kozberg. Welcome.

SENATOR MURRAY: Thank you.

The first issue I would like to point out is to humbly ask the Committee not to hold it against Roger that I consider him a friend. So, it's why I brought up right at the outset.

SENATOR BATTIN: I don't know if we can overcome

that.

[Laughter.]

SENATOR MURRAY: I'm going to be very brief. This is less an introduction than an urge of the Committee to support Mr. Kozberg.

He has had a long and significant career as a volunteer public servant in positions just like these. He and I first met each other when he was a member of the CTC when I joined the Transportation Committee in the Assembly, and he has given me some good advice over the years.

And he has handled all of those assignments with great dignity, in particular where there have been controversial issues. He has done them in a very -- handled them in a very academic, and particularly importantly for this position, a non-self-aggrandizing manner and tried to do the best that he could do for the State of California.

This is actually, of all of that long list of things that he's done, this is the thing that comes closest to his actual area of expertise in the insurance industry, where he has, again, a long career, operating at the very top with top people in that industry and understands both the challenges and possible solutions to the problems that beset not just Cal STRS but our pension issues in general.

With that, I would say that he has served both Republican and Democratic administrations and has been well respected by both sides of the aisle in the Legislature. And with that, I would say that you couldn't find a better appointee, all due respect to the previous witness, you couldn't

find a better appointee to this position. I urge you in strongest possible terms to confirm him.

CHAIRMAN PERATA: Thank you, Senator.

Any questions of the Senator?

Mr. Kozberg.

MR. KOZBERG: Thank you very much, Chairman Perata, Senators.

I haven't any prepared remarks, but first I must thank the Senator for the kind introduction. I guess he disclosed the bottom line, that I'm older than most, but then that's true.

I have been privileged have been born in California. Worked here all of my life. Educated in public schools in the Los Angeles area. Graduated from U.C.L.A.

And as I list of all the great things that I may have done, one that -- if you'll grant me the privilege of introducing my wife, Jane Kozberg, who is sitting discreetly way in the back. Some, you may recall that she was here for many years as Secretary of State and Consumer Services for the State of California.

Besides that, I guess I need to tell you that I take this job very, very seriously. I was honored to be selected. I'm honored to be considered, and whatever questions you have for me, I'm pleased to answer.

CHAIRMAN PERATA: Thank you. I'll yield.

SENATOR BOWEN: Well, Mr. Kozberg, I guess my first question would be whether, on behalf of Cal and USC graduates, you think that we are appointing too many U.C.L.A.

graduates to the Cal STRS Board.

[Laughter.]

MR. KOZBERG: They're certainly well represented.

SENATOR BOWEN: I notice that you also raised the issue of the differential in gender, and I appreciate that as well. I think if I had not happened to read Ms. Harris' answer first, you might have the gotten the award for raising this issue first.

Again, I think this is a really critical issue for teachers, for nurses, for state employees who happen to have a predominance of female employees. So, I really appreciate it being raised.

I just wanted to ask you the same question that I had raised with Ms. Harris about the Social Security issue, and whether you think there is any way that we might address that, even if we did not have the unfunded liability to deal with. And what the impact you think will be on recruiting teachers in California if we don't address it.

MR. KOZBERG: Well, I'm certainly not an expert on what motivates people to seek employment. As best I'm able to determine, the Cal STRS system has served its members very well.

I would argue against any change that might include them in the Social Security system. I think that if you look at the normal costs for providing benefits for Cal STRS members, it is quite economical compared to PERS and compared with just about everybody else. So, it's an anomoly.

Most people are covered by Social Security.

Teachers simply are not. And I think that there are ways that you could address the inequity of people who have part-time teaching occupations, or who come into teaching later on.

It's just one of those things that I guess we can't really change it for members that are there now, and perhaps we can come up with a more flexible plan for people who are entering the profession from now on. There certainly should be a way not to penalize them.

SENATOR BOWEN: I think that's a very serious issue. It's something where we don't do that with people who had public service in the public safety arena, for Legislators who have a retirement plan -- and I will note that there aren't any around this horse shoe. There isn't an offset.

I think it's that way with most public employment, and the teachers are unique in this offset, so far as I'm able to determine.

So, I would welcome efforts of the Cal STRS Board to try to figure out a way to deal with this. I know that we don't have unlimited public dollars, and we need to deal with the other issues that have been raised, the health insurance issues for retirees, and other education issues.

But again, I hear this issue a lot when I'm out around the state.

MR. KOZBERG: I know it's an issue that our staff has given a lot of thought to. I can't tell you with any certainty they've come up with solutions, but it's certainly something that is a concern, and it's something that's being addressed constantly. And we will continue to address that.

SENATOR BOWEN: Thank you.

SENATOR BATTIN: I move the nomination.

CHAIRMAN PERATA: Boy, you're going to get by easily. We have the room until 3:00.

[Laughter.]

CHAIRMAN PERATA: I just wanted to ask you, Roger, about considering the same thing about the minutes, the publication of the minutes verbatim as a method of providing more detail for a subject matter that lot of people are interested in. It would just be consistent with the Franchise Tax Board and PERS.

MR. KOZBERG: It'll certainly be considered. Would video be just as good?

CHAIRMAN PERATA: Probably be even better. Certainly be more entertaining.

MR. KOZBERG: I think it's probably cause us to dress up a little better.

CHAIRMAN PERATA: There you go. You'd look more like teachers did years ago.

Anybody here in support of the nominee, not that it's necessary. Nobody here in opposition. Good.

Call the roll, please.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations and thank you.

MR. KOZBERG: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 1:59 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of January, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

CALIFORNIA LEGISLATURE

MEMBERS
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EBRA BOWEN
ILBERT CEDILLO

GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

November 22, 2005

Jerilyn R. Harris
400 Vichy Hills Drive
Ukiah, CA 95482

Dear Ms. Harris:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California State Teachers' Retirement Board (CalSTRS).

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by December 15, 2005.

Goals

Question:

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California State Teachers' Retirement Board?*

Unfunded Liability

Results from a 2004 actuarial valuation of the defined benefit program indicate that CalSTRS has an unfunded liability of $23.1 billion. The study concluded that if the cost of this obligation was amortized over thirty years, it would require either an increase in the contribution rate or a reduction in liabilities equal to almost 5 percent of annual compensation. A number of options for resolving this problem have been presented to the board.

Questions:

1. *How much confidence do you have in the actuarial studies presented to the board? How do you decide your confidence level in the actuarial information?*

2. *In less that a decade, it is estimated that 100,000 teachers will retire. Do you believe the actuarial model used by the board adequately takes this into account? What advice and counsel should the board be giving local school districts facing the challenge of significant pension costs?*

3. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? On what basis did you reach your conclusion?*

4. *What criteria, priorities and issues should be considered by the board in developing an approach to address the unfunded liability?*

Proposed Changes to Teacher Retirement Benefits

Information provided by CalSTRS states that the average retired teacher in California has worked for twenty-seven years, retires at the age of sixty-one, earns an annual salary of $71,000 when they retire, and has an initial retirement benefit of $46,000. CalSTRS members do not participate in Social Security. Therefore, the retirement benefits provided by CalSTRS are the only benefits available to educators from their public school employment. Throughout their working career, California teachers contribute 8 percent of their salaries towards their defined benefit retirement plan.

Last year, there were discussions of changing public pensions from a defined benefit to a defined contribution plan. Now Assemblyman Keith Richman has introduced ACA 23 which would prohibit all public employees hired after July 1, 2007, from enrolling in a defined benefit plan. Instead employees could enroll only in a hybrid plan (which is comprised of both defined benefit and defined contribution components) or in a defined contribution plan.

Questions:

1. *Altering public pension benefits would be a significant change in state policy. What factors do you believe should be considered by policymakers if they wish to consider such a change? Which of these factors do you believe should carry the most weight in making such a determination and why?*

2. *How would you determine the viability of either a hybrid plan or a defined contribution plan for the fund? How would you determine the viability of either plan on the future retirement financial security of new employees? Do you think that such a change is potentially more detrimental to female retirees?*

3. *If there were a change in the retirement plans, do you believe that new public school teachers should receive benefits comparable to existing benefits? Why or why not?*

4. *Do you believe it would require an increase in the current teacher contribution rate of 8 percent to provide new employees with the same level of benefits? How did you make that determination and, if the contribution were to increase, would you characterize that as a pay cut?*

5. *What impact would a change to a hybrid plan have on the unfunded liability of the current system?*

Corporate Governance

In recent years large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest in the belief that responsible corporate governance is essential to the safety of their investments.

Question:

1. *What are your views on the California State Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

cc: Teachers' Retirement Board

DP:RS:dc

Jerilyn Harris
400 Vichy Hills Drive
Ukiah, CA 95482
707.462.2583

December 14, 2005

Senate Rules Committee
California State Senate
State Capitol, Room 420
Sacramento, CA 95418

Dear Chairman Perata and
Senators Battin, Ashburn, Bowen and Cedillo:

Thank you for the opportunity to respond to your questions of November 22, 2005. Though my tenure as a CalSTRS trustee is short, and my learning curve continues to be almost vertical, this is clearly the most challenging and rewarding experience of my professional life. My goals for the Teachers Retirement Board are developmental but clarify with each meeting.

Goals

1. My goals as a trustee include: to protect the Teachers Retirement Fund and the interests of retired and active California educators; to recommend a strategy to the Legislature for addressing the unfunded CalSTRS liability; to ensure retired educators avoid poverty through purchasing power and inflation protection; to end the teacher Social Security penalty for those who qualify for benefits; to address the inequity of retired California educators who lack health insurance.

I hope to see CalSTRS initiate a new study of the health care issue for California educator retirees and investigate the impact of this inequity on the 50% of California teachers with no health coverage upon retirement. Possible strategies might be to: investigate the benefit of STRS-member group purchasing for medi-gap and other health plans and encourage school districts that offer neither health coverage, nor an election to opt into Medicare, to do so.

Unfunded liability.

1. Tempered by my short tenure, I have confidence in the actuarial studies conducted by CalSTRS. The CalSTRS board and staff build in redundancies to assure no one entity is responsible for information that comes to the board, including the actuaries. To assure the CalSTRS actuaries are accurate periodic external validations occur. CalSTRS recently completed this process. I have little experience in this area, but am assured by the competence of the CalSTRS staff and the integrity of the checks and balances built into the system. New board member Roger Kozberg, with a lifetime of professional expertise in this area, provides additional expertise and corroboration of the actuarial projections.

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2. The actuarial models utilized by the board take into account the 100,000 teachers who will retire within the next few years. While staff makes considerable effort to communicate with local school districts on several levels, the word on the unfunded liability is not getting through to most teachers. In general younger teachers take little interest in retirement planning and many others are poorly informed that a problem even exists. Without systemic recognition that there is a problem, many teachers are not concerned that they should be prudently planning for retirement. When teachers realize pay raises in the future may be impacted to fund the current deficit they begin to pay attention. The CalSTRS Board needs to be sure that teachers are aware, informed, and that they understand the seriousness of the situation. All must prepare for some painful times as CalSTRS works with the Legislature and stakeholders to turn things around in the least damaging manner.

3. There are several options for addressing the unfunded liability with various degrees of pain. Human nature is that someone else's ox should be the one gored. In my opinion, one single option is neither realistic nor fair. Most educators are unaware that teachers pay a relatively low retirement percentage compared to most other professionals because we don't pay into Social Security. Neither, however, do we receive Social Security benefits, even if earned from other employment or through a qualified spouse. For those who qualify for Social Security, the Social Security benefit is reduced by $2 for every $3 earned – hardly an enticement to enter teaching from other professions. To protect the fund, teachers, districts, and the state should all pay more. Well publicized, gradual increases, with educators fully informed of the impact on raises and retirement may be a bitter pill – but necessary without an unexpected windfall. The retirement enhancements granted over the past few years also need to be carefully examined to assure the policymakers they are affordable.

4. The board should look first at inflicting the least harm to those who are most vulnerable and least able to adjust. Retired teachers, particularly those who retired prior to significant benefit increases over the last decade, should be protected first and foremost. The supplemental fund that protects retiree purchasing power (at 80% and the 2% COLA), which isn't even compounded, should be guaranteed minimums for those already retired. Teacher age and proximity to retirement should be considered as a high priority for policymakers over future teachers with many years to save for retirement. The exceptional skills of the CalSTRS investment team should be made accessible for younger teachers, with counseling about supplemental investments, 403Bs and other investment tools, and saving for a rainy day.

Proposed Changes to Teacher Retirement Benefits

1. Policymakers no doubt know that not all school districts can equally compensate teachers for the same work. Teachers in my area would probably be surprised to learn that state teachers retire with "$71,000 average salaries" as referenced in the Chairman's letter. Hopefully legislators recognize that LAUSD, with high salaries and lifetime health benefits, is not all California. As many as half of California teachers may be lacking retirement health benefits. Low district salaries and high health care costs are condemning far too many teachers, who dedicated their lives to the children of our state, to poverty in retirement. The greatest burden should be placed on those can most afford to bear the additional costs and who have the longest time to plan for retirement.

Actuarial studies can show legislators what level of income will be needed to fund the large numbers of retirees in the future. Recent increases in retirement benefits for public safety workers in California will add to already strained local and state purse strings. Teacher defined benefit retirements of 2% at 60 seems comparatively meager when public safety workers can retire with 90% of final compensation and full health benefits at age 50. CalSTRS also already has a form of hybrid system in the DBS where the CalSTRS defined benefit is supplemented by investments outside the guaranteed DB. This differs from the hybrid format proposed by the Richman legislation.

2. The state commitment and guaranteed benefit to educators currently in the pipeline, with first priority to those who are close to or already in retirement, must be communicated clearly to members to avoid "pension panic" in our ranks. If policymakers decide on a change in contribution rates or design, it would be wise to assure those who enter teaching under a new system that there are sufficient years for these newer educators to plan and save for their retirement. The integrity of the current CalSTRS benefit fund should not be adversely impacted by a hybrid or defined contribution plan.

3. The CalSTRS staff and outside actuaries will evaluate the impact of a defined contribution or hybrid plan and bring this data to the February board meeting. New employees, thanks to state policymakers, are hired at salaries far in excess of those 8-10 years ago due to state policy increases to districts. Though still not high, teachers now have considerably more financial resources to plan for retirement than those who taught over the previous decades. If policymakers change retirement options there will be a disparate impact on females since the majority of California teachers are women. Women, who traditionally take time out of their career for child-rearing and generally receive lower salaries, must get smarter about preparation for retirement. And CalSTRS must help focus all teachers on the need for attention to retirement funds, potential growth from compounding, and the importance of early investment.

4. Ideally, if the state can afford it, new public school teachers should receive benefits comparable to, or in excess of, existing benefits. Teachers who earned

years of credit when CalSTRS was prohibited from active investment in equities were hampered by regulations that held down the funds designated for their retirement. Hopefully, with time, the unfunded liability will resolve and future benefits will once again climb. When that happens, issues such as compounding COLAs, Social Security write-off, increased 403B investing, group health benefits, and other possibilities should be prudently investigated. But first the fund must be made sound.

4. Unfortunately it appears an increase in contributions from future teachers may be necessary to address the deficit if the state is to provide new employees the same level of benefits as those currently in the pipeline. The unfunded $24 Billion is real, and must be remedied to preclude its growth. Teachers would be more inclined to characterize an increased contribution as a pay cut if they absorb the entire 4.6 percent. If teachers understand the rationale for the increase, and see that districts and the state also contribute, it would be more difficult to characterize it as a pay cut. Communication of the problem, and shared pain, is essential to minimize opposition. Any increase, preferably minimal, should either sunset when full funding returns or result in increased benefits to retirees. Regardless, teachers don't make a lot of money, and it will hurt.

5. CalSTRS staff is presently analyzing the impact of a hybrid plan on the unfunded liability. We expect to have than information at the February board meeting.

Corporate Governance

1. As a fiduciary I swear to protect the financial interests of the members of the education community, both active and retired. Investments in companies with excessive compensation or retirement packages that will negatively impact the bottom line of that company are poor investments for CalSTRS. From where I stand at this juncture the present corporate governance policy displays CalSTRS leadership in the investment world and serves notice that unscrupulous actions will not be tolerated. This is relevant for all fiduciaries. If outrageous salaries, proxy manipulation, excessive termination and retirement settlements, and other misuse of company funds occur then the investment is not realizing its full potential and is at risk. This impacts the fund, and therefore its shareholders.

Thank you for your thoughtful, thorough evaluation of my candidacy for confirmation to the Teachers Retirement Board. As a CalSTRS retiree, I appreciate your support for the educators of California. I genuinely hope you will consider me worthy to continue in this important position. I shall continue to serve with honor if given the opportunity. Happy holidays to each of you.

Sincerely,

Jerilyn R. Harris

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CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

November 22, 2005

Roger A. Kozberg
721 North Linden Avenue
Beverly Hills, CA 90210

Dear Mr. Kozberg:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California State Teachers' Retirement Board (CalSTRS).

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by December 15, 2005.

Goals

Question:

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California State Teachers' Retirement Board?*

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Results from a 2004 actuarial valuation of the defined benefit program indicate that CalSTRS has an unfunded liability of $23.1 billion. The study concluded that if the cost of this obligation was amortized over thirty years, it would require either an increase in the contribution rate or a reduction in liabilities equal to almost 5 percent of annual compensation. A number of options for resolving this problem have been presented to the board.

STATE CAPITOL ◦ ROOM 420 ◦ SACRAMENTO, CALIFORNIA 95814-4900 • (916) 651-4151 ◦ FAX (916) 445-0596

Questions:

1. *How much confidence do you have in the actuarial studies presented to the board? How do you decide your confidence level in the actuarial information?*

2. *In less that a decade, it is estimated that 100,000 teachers will retire. Do you believe the actuarial model used by the board adequately takes this into account? What advice and counsel should the board be giving local school districts facing the challenge of significant pension costs?*

3. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? On what basis did you reach your conclusion?*

4. *What criteria, priorities and issues should be considered by the board in developing an approach to address the unfunded liability?*

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Information provided by CalSTRS states that the average retired teacher in California has worked for twenty-seven years, retires at the age of sixty-one, earns an annual salary of $71,000 when they retire, and has an initial retirement benefit of $46,000. CalSTRS members do not participate in Social Security. Therefore, the retirement benefits provided by CalSTRS are the only benefits available to educators from their public school employment. Throughout their working career, California teachers contribute 8 percent of their salaries towards their defined benefit retirement plan.

Last year, there were discussions of changing public pensions from a defined benefit to a defined contribution plan. Now Assemblyman Keith Richman has introduced ACA 23 which would prohibit all public employees hired after July 1, 2007, from enrolling in a defined benefit plan. Instead employees could enroll only in a hybrid plan (which is comprised of both defined benefit and defined contribution components) or in a defined contribution plan.

Questions:

1. *Altering public pension benefits would be a significant change in state policy. What factors do you believe should be considered by policymakers if they wish to consider such a change? Which of these factors do you believe should carry the most weight in making such a determination and why?*

2. *How would you determine the viability of either a hybrid plan or a defined contribution plan for the fund? How would you determine the viability of either plan on the future retirement financial security of new employees? Do you think that such a change is potentially more detrimental to female retirees?*

3. *If there were a change in the retirement plans, do you believe that new public school teachers should receive benefits comparable to existing benefits? Why or why not?*

4. *Do you believe it would require an increase in the current teacher contribution rate of 8 percent to provide new employees with the same level of benefits? How did you make that determination and, if the contribution were to increase, would you characterize that as a pay cut?*

5. *What impact would a change to a hybrid plan have on the unfunded liability of the current system?*

Corporate Governance

In recent years large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest in the belief that responsible corporate governance is essential to the safety of their investments.

Question:

1. *What are your views on the California State Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

cc: Teachers' Retirement Board

DP:RS:dc

California Legislature, Senate Rules Committee

Response by Roger A. Kozberg to questions from Chairman Perata dated November 22, 2005

Goals

My goals as a member of the California State Teachers' Retirement Board are to ensure, in accordance with legal requirements, the security, reliability and efficiency of our plans, programs and services. I hope to assist in the achievement of maximum investment returns on our assets consistent with safety, improvement of communication with our members, streamlining the delivery of our services and increasing the efficiency of our operations.

Essential to success in this endeavor will be a clear understanding of our fiduciary responsibilities, significant background in economics, appreciation of the importance of California's system of public education and its career educators, familiarity with management of large organizations and knowledge about employee benefit programs. Because we live and work in a highly dynamic environment, it is also essential that I devote significant efforts towards staying abreast of those fields in which I am already comfortable and increasing my understanding of the rest.

It may be of assistance to the Committee to note that I graduated from UCLA with a degree in Business, and was employed for forty five years in the insurance brokerage industry. In the course of my employment I assisted a wide variety of businesses, organizations and individuals in benefit matters, and worked with actuaries and benefit consultants. I also owned and managed a small business that grew to some size, and established over forty years ago one of the first retirement programs in our industry. Today I am pleased to be a recipient of pension proceeds, and have a keen appreciation for their importance.

Unfunded Liability

1. I have a high level of confidence in the actuarial studies presented to the Board. Our actuaries have an outstanding reputation, and their work was subjected to peer review by two additional well qualified consultants. I am also comfortable with the assumptions used by our actuaries. It must always be understood however that actuarial studies <u>are</u> based on assumptions and must never be considered as guarantees.

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2. Anticipated retirement patterns are an important component of the actuarial model. Unless and until there are legislative changes regarding benefit levels or contributions, local school districts cannot avoid their portion of pension costs. Our best advice and counsel would be to make the most of these significant benefits in attracting and retaining the best teachers, and managing their reporting systems to ensure that benefit and contribution data is collected and reported so as to avoid financial surprises and unnecessary expense to the system.

3. The CalSTRS Board is currently examining a number of options to addressing the unfunded liability. There is no clear consensus on exactly what constitutes an "adequate" level of funding. It is apparent however that doing nothing will only increase the magnitude of the unfunded liability over time.

I do not believe that there is a single best option at this time. If there was adequate available bonding capacity and an identified source of repayment, this would be an obvious way to immediately eliminate at least a portion of the deficit. Benefit changes, with only two exceptions, could apply only to new entrants, and the effect on overall plan liabilities would be slow to develop.

Implementation of any of the significant options is the province of the legislature. I would advise that while the unfunded liability is a matter of concern, there is time to make a careful study of the alternatives. Any changes in benefits should be considered in light of the competitive environment to facilitate the hiring and retention of the number of teachers that will be required in the future. Further I would advise that changes be comprehensive so as to reduce the possibility of future unfunded obligations.

4. CalSTRS staff and board are actively engaged in the process of addressing the unfunded liability. On the asset side, the effects of increased contribution rates from various sources are known, as are the effects of investment returns above or below our actuarial assumptions. The board must carefully examine a number of potential benefit changes, and the economic effect of each on both the deficit and the plan participants.

I believe we also need to obtain the best available information as to how some or a combination of possible changes might affect the ability of the educational system to compete in the labor market of the future.

Proposed Changes to Teacher Retirement Benefits

1. I believe the first and most important consideration should be ensuring that obligations to current plan participants are met. To accomplish this it is essential that any change in state policy addresses the issue of unfunded liability.

Policymakers must also consider the critical difference between CalSTRS members and employees eligible for Social Security. I believe that our members are well served by their current status and would not recommend that this be changed; however any alternative plan design must accommodate the distinction.

Ultimately taxpayers are the source of most of the funds for our system of public education, and they must believe that the system is operated as economically and effectively as possible. Policymakers must ensure that change is consistent with this expectation.

2. Ultimately the viability of any benefit program is its ability to attract and retain members. Implicit in this is the financial guarantee of desired benefits, and that in turn implies careful plan design, adequate funding and appropriate management.

Actuarial tools are available to measure the ability of almost any plan design to provide a set of benefits at a given time. Plan viability is a function of adequate contribution and achieving investment targets. There is no reason to believe that a defined contribution or hybrid plan would outperform or underperform a defined benefit plan if all inputs remained constant, however such plans typically involve a degree of member discretion as to contribution and investment direction which can significantly affect outcomes.

The female population at the average age of our retirees is estimated to have a life expectancy of approximately three years more than males of the same age. The existing defined benefit plan pays identical benefits to male and female employees; a change to a true defined contribution plan would provide, on average, a similar principal fund for male and female retirees. As annuity rates are higher for females, the principal fund would purchase, on average, a smaller benefit, and a similar economic effect would apply to other investment/withdrawal options.

It is my understanding that most male retirees select a settlement option with reduced initial payment amounts and contingent benefits, while most female retirees select a higher "life only" payment, so the actual economic effect on the retiree only may not be that different.

3. I believe that any retirement program must serve the needs of the education system. Benefits for new public school teachers must be adequate to attract and retain the number and quality of people the system will require; whether this will suggest equivalent or different benefits will be driven by the labor marketplace.

4. Current contribution levels do fund the normal costs of existing benefits, however they are not adequate to also amortize the existing unfunded liability. An increase in the rate of teacher contribution would be one method of reducing the deficit, as would an increase in contributions by the schools or the State.

Absent an offsetting salary or benefit improvement, an increase in contributions by current plan participants would equate to a pay cut.

5. If the design of a hybrid plan worked to significantly reduce the size of the defined benefit component, there could be a negative effect on the ability to amortize the existing unfunded liability. This possibility could be eliminated by providing a vehicle for funding the deficit, such as a bond program, as a part of any plan change legislation.

Corporate Governance

I believe that the Board's corporate governance policy is well reasoned, sound and appropriately executed. Corporate governance is indeed linked to our investment results, and our actions in this area are very much tied to our fiduciary responsibilities. As a consequence of our size and leadership in this area, CalSTRS enjoys an outstanding reputation in the investment community, among its peers and with the companies in which it invests. Our continued thoughtful, consistent and uncompromising efforts are essential.

January 19, 2006

The Honorable Don Perata
Chair – Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

Thank you for your January 13 letter regarding my confirmation hearing and allowing me to outline a few goals as a member of the Contractors State License Board (CSLB). I am honored to serve as a public member on the CSLB, and I appreciate your consideration.

My familiarity with the CSLB and its mission goes back a number of years based on my working experience at the Department of Consumer Affairs and the State and Consumer Services Agency in the mid-to-late 90's.

My chief goal is to vigorously protect the interests of consumers. I recognize the vast consumer demand for construction services in this state - one of the largest economies in the world. As a member of the education committee of the board, I want to make sure consumers have the proper information to make informed choices, and know their rights and options in the marketplace. Therefore, raising awareness of the laws and regulations governing construction is a critical mission.

Poor workmanship, unlicensed activity, job abandonment, lack of building permits, and violations of home improvement contracts are among the common complaints. Recognizing that a home is a consumer's single biggest investment, his/her ability to protect that investment from unscrupulous workers, and choose among the vast network of upstanding and competent licensed contractors, is crucial. As people rebuild in the wake of Hurricane Katrina, flooding in northern California, and other catastrophic events we are reminded of the consumer vulnerability to unlicensed activity and unscrupulous workers. The millions of homeowners in California depend on agencies like CSLB to administer and enforce laws and standards in the marketplace.

Another goal is to help ensure that the CSLB is operating in the most efficient and effective manner possible, including licensing, testing, enforcement, education, and any other relevant functions. A chief role of the CSLB is enforcing the laws, regulations and standards governing construction contracting in a fair and uniform manner. I take my responsibility as a board member to ensure a fair and uniform marketplace for licensees and consumers very seriously. There are nearly 300,000 licensees in California and 43 job classifications. Ensuring the CSLB is an effective public agency for proper licensed activity is critical.

Thank you again for the opportunity to outline my broad goals as a member of the Contractors State License Board. I look forward fulfilling my duties in this important public role, and respectfully ask for your vote to confirm.

Sincerely,

Robert D. Brown

cc; Members of the Senate Rules Committee

January 18, 2006

The Honorable Senator Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Perata,

Thank you for the opportunity to be considered for confirmation as a Governor-appointee to the Contractor's State License Board (CSLB).

In response to your request for information in your letter dated January 13, 2006, I submit the following:

Umbrella goals:

1. Understand that the purpose of the CSLB is to protect the consumer and that this should be the ultimate test of any action I take as a Board member. At the same time, though, being mindful that all actions must be legal, moral and ethical so that the Board, through its regulations and policies, does not impose onerous requirements on the industry it regulates or the staff it oversees through the CSLB Registrar.
2. Be diligent in my undertakings – especially attending meetings, responding to communications and maintaining a regular dialogue with the Board Registrar.
3. Be mindful of the need to not bring discredit to the appointing or confirming authorities by my personal actions.
4. Remain a neutral and impartial judge when evaluating issues brought before the Board.
5. Lay the foundation for ultimate success by knowing the authority granted to or withheld from the Board, and by understanding how to petition for needed change or assistance.
6. Build relationships founded upon personal credibility and integrity that will enhance the opportunity of fulfilling my responsibilities as a member of the CSLB.
7. Acknowledge that my appointment was to the sole public member position which requires that the appointee be a senior citizen and a member of a statewide senior organization. This clearly implies that I will need to give a goodly amount of attention to issues effecting seniors.
8. Stay abreast of factors that have a bearing on the industry being regulated so as to offer informed input and subsequent votes that precede the need for action.

Specific Goals Follow:

1. Short Term:

    a. Evaluate whether or not the less than $500 labor and material maximum for unlicensed persons to perform what is commonly called "handyman" work is unfairly weighted against senior citizens

    b. Clarify to the public, through Board and personal efforts while representing the Board, the meaning of "licenses" issued by counties. These are merely business licenses, but could mislead consumers into believing they are hiring a licensed contractor.

2. Long Term:

    a. Taking into consideration financial and staffing constraints, work with all concerned parties to schedule and, where possible, attend as many Senior SCAM stopper seminars as is possible to help them avoid the abuses of unlicensed contractors.

    b. Seek appointment to each of the Board committees, in turn, with the intent of gaining knowledge and becoming well rounded in all areas dealing with the execution of Board policy.

Regarding your request for an updated Form 700, there are no changes to my form dated October 4, 2005.

Sincerely,

Paul R. Green Jr.

Paul R. Green Jr.
Candidate for confirmation, Contractor's State License Board
3709 Bainbridge Drive
North Highlands, CA 95660
(916) 332-6180

Senator Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA

19 January 20, 2006

Chairman Perata,

Thank you for the opportunity to be confirmed as a member of the Contractor's State License Board. This brief letter will describe what I hope to achieve as a member of the Board.

My professional career has been in high technology companies. I have spent the past twenty years in the Silicon Valley and have founded and managed two venture capital based software companies: both were industry leaders in the area of customer relationship management. Over that time I have become expert in how large enterprises deal with large diverse customer bases. I also learned the lessons of strict financial accountability and management of staff during tough economic times.

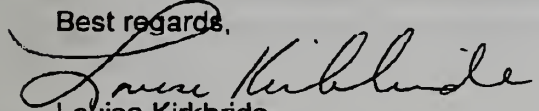
The Board has an important role to play for both the state's licensed contractors, and the general public. I hope to be able to help the Board's senior management to maintain a philosophy of continuous improvement in the areas of customer care. Outreach to the general public must play a large role in this, for while licensed contractors know well what the role of the Board is, it has become clear that the general public does not. Until the public understands what services the Board can offer, its role in helping homeowners avoid unscrupulous contractors will be limited.

I want to see the Board become a leader in adopting technology that enables efficient communication with the public and with contractors. Enterprises under stringent financial constraints have long since relied on technology to improve customer communication while maintaining or even reducing costs.

I also hope to see the Board become a model for other agencies in financial accountability and transparency. Although a government organization is different is many ways from a private enterprise, in some important ways it is not. By improving the understanding and reporting of how money is being spent, the Board will be better able to adapt to changes in revenue or customer load without a negative impact on customer service.

I look forward to continuing to work with the management and staff of the Board, and to helping them achieve important goals of service to the people of the State of California.

Best regards,



Louise Kirkbride
654 N. Santa Cruz Avenue
Los Gatos, CA 95030
408-395-4821

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

BUILDING AND SAFETY DEPARTMENT

James J. Miller
Director

January 17, 2006

Honorable Don Perata
State Capital
Room 420
Sacramento, California 95814-4900

Dear Sir,

Thank you for this opportunity to share my short and long term goals with you as a member of the State Contractors License Board.

My short-term goal is to improve the relationship between building departments and the Board in regards to the services that both agencies provide to the consumer. Local building departments come into contact with thousands of licensed and unlicensed contractors each day through their permitting and inspection process. Many times they are the first to identify an issue that falls within the Boards enforcement and public education efforts. This extensive contact with the construction industry could be utilized to better educate the public on the need to hire licensed contractors and how to take advantage of the public services provided by the Board.

My long-term goals are to develop an enforcement program that effectively deals with the unlicensed contractor and unqualified licensed contractor. Every day building departments receive numerous complaints regarding poor workmanship that do not fall under the authority of the building codes. The general public however looks to the local building department for help in resolving these problems. If licensed contractors were required to attend a mandatory mediation hearing held by the local jurisdiction and chaired by the Board many workmanship complaints would be resolved more quickly. In addition the building inspection process also creates an opportunity for local departments to enforce licensing requirements at the job site. By allowing field inspectors to enforce unlicensed activity would also greatly expand the Boards enforcement abilities.

Thank you for this opportunity to share with you my goals as a member of the Contractors State License Board. If you need any additional information please feel free to contact me directly at (951) 955-2025.

Respectfully,

James J. Miller
Director of Building and Safety

JAN 18 REC'D

4080 Lemon Street•12th Floor•Riverside, CA 92501• (951) 955-2000• FAX (951) 955-2023
MAIL: P.O. Box 1440, Riverside, CA 92502-1440

Senator Don Perata, Chair
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

January 13, 2006

Dear Senator Perata,

I am seeking confirmation to the position of Board Member with the Contractors State License Board. I was appointed to this position last year and have dutifully attended every meeting of that Board as well as many of the committee meetings.

To simplify my goals relative to this board;

- In the short term, I would like to see more public utilization of the information that the Contractors Board has to offer.
- My long-term goal would be to see the Board become the premier consumer protection agency; through increased enforcement, better communication and cooperation with other Governmental agencies, to address the growth of the underground economy in this State.

I am honored to serve as a Board Member with the Contractors State License Board and I greatly appreciate you considering my confirmation for this position.

Sincerely,

Donald A. Zampa

JAN 17 REC'D

Marilyn Hendrickson
7277 Mentor Lane
Vacaville CA 95688
Phone: 707.449.8413
Fax: 707.446.3122

January 17, 2006

Don Perata, Chairman
Senate Rules Committee
California Legislature

Thank you for the consideration and possible confirmation as a member of the California Exposition and State Fair Board of Directors.

In my brief tenure on this Board, I have realized that with the future will come considerable change. Cal Expo and the State Fair will require insight and direction to keep pace with current times. In the long term, the Board will be relied upon to research, develop, monitor and direct the efforts of all participating individuals and committees. The structure and potential use of Cal Expo real estate, and improvements and utilization are of great concern and will continue to be major priorities of the Board.

On the short term level, my strength is in the area of communication. I want to increase attendance at the State Fair. I am on the State Fair, Agriculture and Marketing Committee and we are charged with programming and marketing of the annual State Fair. I maintain strong contacts with the press and radio and feel I can make an impact in this direction.

My background in business, management, training, personnel and accounting provide me with strengths that could be beneficial to the objectives above. My enthusiasm and support for Board projects is very sincere. I feel the State Fair is truly an institution and should have a long future. I appreciate your consideration and hope you find this information helpful in soliciting support for my confirmation. I truly believe I will be of benefit on the Board.

Regarding my Form 700, no changes are necessary.

Sincerely,

Marilyn Hendrickson

Marilyn Hendrickson

527-R

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ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 1, 2006

1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

WILLIAM "BILL" L. JONES
Bay-Delta Authority

SENATOR CHARLES POOCHIGIAN

PATRICIA T. CLAREY, Member
State Personnel Board

SENATOR JOHN BURTON

DAN CURTIN
California Conference of Carpenters

MICHAEL BARATZ, Chief of Staff
SEIU Local 1000

TERRY C. BRENNAND
SEIU State Council

CAITLIN VEGA
California Labor Federation

DAVID BALL-HAWKINS
California Faculty Association

JOSHUA GOLKA
American Federation of State, County & Municipal Employees

DAVID F. THORMAN
State Architect

LAURA E. WILLIAMS, President
Californians for Disability Rights, Inc.

HOLLYNN D'LIL
Coalition of Disability Access Professionals

RICHARD SKAFF
Coalition of Disability Access Professionals &
Designing Accessible Communities

JEAN RIKER
Californians for Disability Rights

BOB RAYMER, Technical Director
California Building Industry Association

KURT COOKNICK
American Institute of Architects, California Council

LEE ADLER
Structural Engineers Association of California

MATTHEW WHEELER
California Building Officials

CHERYL BERGAN
California Foundation for Independent Living Centers

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Former Pro Tem, sitting Member, Chuck, would you like to come up.

Senator Poochigian is here to introduce Bill Jones, who's a member of the Delta-Bay Authority.

SENATOR POOCHIGIAN: I'll be brief.

CHAIRMAN PERATA: Talk all you want.

SENATOR BATTIN: But be brief.

SENATOR POOCHIGIAN: It really is, Mr. President, Mr. Chairman and Members, my pleasure to be here to introduce someone who doesn't need an introduction, but the formality of this process, I think, justifies it.

It is my pleasure to introduce former Secretary of State, former Member of the California State Assembly, a distinguished public servant over a very long career in this building and over at the Secretary of State's office, Bill Jones. Bill has been a good friend, a family friend, for as long as I can remember.

And for as long as I can remember, I can report to you what you know, which is that he has always served with great dignity, tenaciously pursuing various causes and being a leader on a number of policy issues, being a leader politically as well. And always, in every assignment, every role that he's sought to play, has done so with a level of integrity that's exemplary, that's earned him respect in a bipartisan way as he has sought to deal with of the some of the big issues our state faces, finding common ground, and again, in a manner that brings

dignity to the effort.

So, it's my pleasure to be associated with him, and to take this little bit of time to introduce him to you.

He has throughout his career, as I think you all know, while being involved in a wide range of issues, from criminal justice to business issues, and on and on, natural resources has been his area of keenest interest because of his background. The natural resource area has been the area of his keenest personal interest, his area of greatest expertise, his area of greatest passion, and in particular, water: water development, water storage, meeting the incredible and increasing demands for water, reliable water sources in our state over, again, the course of his entire career.

So, the position to which he's been appointed, and for which I assume and hope that he will be confirmed today, is one that fits neatly within his portfolio, his expertise, his background, his passion, and I commend him to you.

CHAIRMAN PERATA: Thank you, Senator.

Secretary Jones, before you begin.

Senator Battin wasn't as attentive as we normally would like him to be, but they live in an area where they depend upon us for their water.

So, I just want you to be expansive and forgiving as you begin to think through --

SECRETARY JONES: I'll be tolerant.

SENATOR BATTIN: Let me take this opportunity to move the confirmation.

[Laughter.]

CHAIRMAN PERATA: All right. We got that taken care of.

Please.

SECRETARY JONES: Thank you, Mr. Chair and Members.

I appreciate the opportunity to be here. I had a chance to visit with, I think, most of the Members personally. I have not had a chance to visit with the Chairman, and I apologize for that.

CHAIRMAN PERATA: You're well known to me, sir.

SECRETARY JONES: Thank you, sir.

I'm here because a constituency group from the Central Valley, after Senator Costa moved off this body to go to Congress, asked me if I would fill in. The Governor was gracious enough to appoint me to this position, and I am filling out that term specifically.

But more importantly it is, as Senator Poochigian stated, my interest to make sure that we have a strong, reliable, quality form and ability long-term to have stable water supply.

I want to thank the Senator for his comments. We have worked together for many years.

I responded to the letter that, Mr. Chairman, you had sent to me, asking me my thoughts. I have discussed those with each Member of the Committee, and I think I hopefully responded in kind with what you asked.

Specifically, though, I think this is one issue where often times people perceive that it is intractable and

difficult to accomplish goals. I would argue that those are the very issues where the partisanship goes away because of the need and the necessity for action, and consequently, it gives us opportunity to have successes. And I think water is in that environment today.

We all know that the CALFED process has had its ups and downs. And I know I worked on it originally and kind of left this process in '98, when I was involved with Secretary Babbitt and Governor Wilson and others. After that period I was not as active, but I have followed the process, and it's my strong belief that in whatever form the CALFED process takes, we can accomplish together great things in the 21st Century for the people of California. That's the sole reason for my being here.

I would appreciate your vote for my confirmation to the CALFED Authority.

CHAIRMAN PERATA: Thank you, sir.

I have one question that came up, and I was a little perplexed. The majority of you on the commission voted to abolish yourselves.

SECRETARY JONES: That's right.

CHAIRMAN PERATA: In case anybody asks me, I'd like --

SECRETARY JONES: It's a fair question, and I asked myself that question also.

As you know, there's been an awful lot of criticism directed at the authority and the process itself over the last number of years. This Governor chose to do a review of the governance of CALFED, both Department of Finance, Little

Hoover, KPMG went through a very exhaustive process and came up with suggestions that would change the governance. And the Governor felt that those changes needed to be made.

As I said in my letter to you, that there are a number of ways to govern the authority process of CALFED. There's a number of different approaches.

But my strong belief, no matter whether the Governor's a Republican or Democrat, they ought to have the flexibility to design for their administration a process that they think is workable, since we inevitably, particularly on water, have to hold them accountable.

So, I am here to be confirmed for a group that I did vote to set aside in favor of a water commission, or some other approach. It doesn't change the fact that in that same letter I also said that the deadlines need to stay the same. We need to march forward with the programs we have, but the Governor needs to be given what latitude is necessary so that he takes full responsibility and accountability for the CALFED process. And that was really the reason for my vote, to give him that latitude.

CHAIRMAN PERATA: I just want to make sure that people didn't think we're confirming some nut. So, thank you.

SECRETARY JONES: Yes.

[Laughter.]

SECRETARY JONES: I appreciate you clarifying that point for me personally.

CHAIRMAN PERATA: Any questions?

Do you have family that you want to embarrass

publicly?

SECRETARY JONES: No, Mr. Chairman.

CHAIRMAN PERATA: We have a motion by the Senator that just left.

We give him one thing to do --

SENATOR ASHBURN: And he did it and left.

[Laughter.]

CHAIRMAN PERATA: Any support or opposition?

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: It's actually five. We'll give Senator Battin his vote.

SECRETARY JONES: Thank you, Mr. Chairman. Thank you, Members.

CHAIRMAN PERATA: Next we have another distinguished guest. He's working the room. Senator Burton, would you like to come forward.

CHAIRMAN PERATA: It's good to see you, as usual.

SENATOR BURTON: Members, I'm here to introduce Pat Clarey, who's up for confirmation to the State Personnel

Board.

I would like to say up front, if I were a Member of the Committee I would vote to confirm her. I know that I was kind of hoping that I would be here introducing Gail Kaufman, but the Governor did not want to appoint her for some reason.

I think among most, except maybe you, Mr. Chairman, that I had the ability and pleasure of working with Pat when she was the Chief of Staff. I found her to be fair. I found her to be straight, and I found her to be open.

I know that some of my friends from labor, you know, wonder why the Governor would appoint a Republican and a former Chief of Staff to this position. And as I say, I think it was because Gail had other things to do.

But I think Pat will be a good, fair member of the State Personnel Board. She always kept her word, at least with me and with the Speaker when we were working on various issues. You have your own experience with her, Mr. Chairman, as do other Members of this Committee.

But I have a strange point of view, that usually governors appoint their friends and people they've worked with. And that's why Pat's here. She served in government for quite sometime. I don't think you could, at least in my judgment, hear a bad word from her from anyone who worked with her or had to deal with her.

So with that, I'm very happy to be here to introduce Pat Clarey for her position. As I said, were I a Member of this Committee or a Member of the Senate, I would vote for her confirmation because I think she's a straight-shooting,

straight-forward person.

We didn't always agree on anything but she's able to have --

[Laughter.]

SENATOR BURTON: Did I say anything or everything?

But she was able, if you showed the facts to her, she would be willing to change her position. When she showed facts to me, I never changed my position. It worked that way.

CHAIRMAN PERATA: We have something in common.

SENATOR BURTON: I give you my friend and colleague.

CHAIRMAN PERATA: Senator, do you have some place to go? I notice you're wearing two watches.

[Laughter.]

SENATOR BURTON: Thanks for reminding me, because this one needs to get fixed. So, I take it over to Monk's; I will have this one with me. But until you reminded me of that, I would have forgot to take it over. Mr. Chairman, I'm forever in your debt.

[Laughter.]

CHAIRMAN PERATA: Together we'll make a whole person.

Thanks, John.

SENATOR ASHBURN: Thank you for asking the question the rest of us were afraid to ask.

SENATOR BURTON: I swear to God, I would have got back to San Francisco and --

[Laughter.]

CHAIRMAN PERATA: Pat, I don't know what you're going to say to follow that.

MS. CLAREY: Good afternoon, Chairman Perata and Members of the Senate Rules Committee.

And thank you, Senator Burton, for that unique introduction.

It is a privilege to appear before you as an appointee to the California State Personnel Board. This board has the responsibility for ensuring that the state has an effective and efficient merit civil service system.

As I've stated in the materials that I have submitted to the Committee, I have two principal goals that I will pursue as a member of the California State Personnel Board.

First, I will work to ensure an adequate number of qualified and diverse employees for the future to carry out the state's mission. Today, California state government faces a massive change in the composition of its workforce. Our state workforce is old, growing older, and preparing to retire in record numbers. State leaders expect that between one-third and one-half of our state's current workforce will retire within the next five years. The question is not if these individuals retire; it's when. And when they do, state government needs to have a plan on filling the gap they leave behind. Workforce planning is essential during this period of transition to ensure that services to the public continue.

Second, I'll work to increase the use of technology to achieve the basic missions of the State Personnel

Board. As California's population continues to grow, state government must meet the increased demand for services. To meet this demand, greater effectiveness in the delivery of services is required.

Information technology is a key factor in the ability of state government to provide more efficient and effective delivery of services. Not only must the state further develop internet and technology based channels for delivery of state information and services, but the data must be consistent, accurate, and secure. State government must manage its information technology resources effectively to provide the needed programs to the citizens it serves.

Throughout my 15 years of public service in the state and federal governments, I earned a reputation of being honest, fair, and open. Over the past couple of years, I've worked with each Member of this Committee.

I have a great deal of respect for the role of the Legislature in determining state programs and will continue my long-standing policy of being open and available to any Member of the Legislature to discuss any issue over which the State Personnel Board has jurisdiction.

I thank you for your courtesy in hearing me today and hope that you'll vote for my confirmation. Thank you.

CHAIRMAN PERATA: Thank you.

Members? Senator Bowen.

SENATOR BOWEN: Mr. President, I actually do have some questions, but in this situation I really would like to hear from the support and opposition before, if that meets with

your approval.

CHAIRMAN PERATA: Certainly.

Those who are here in support, please come forward.

MR. CURTAIN: Mr. Chairman, Members, Danny Curtin, California Conference of Carpenters.

I come in support of this nomination for very similar reasons to what Senator Burton had said. We've had opportunity to work with Pat when she was Chief of Staff to the Governor. Found her a person who, first of all, listens carefully and does look to solve problems. We had discussions, worked both sides of the argument. Where we disagreed, we knew it. Where we could find agreement, we found it.

So, what with we found was that she was fair and looked forward to solving problems. At this point in time, that's a very good commendation. So, we came to support her.

Thank you.

CHAIRMAN PERATA: Thank you.

Anyone else? Anybody here in opposition?

MR. BARATZ: Members of the Committee, my name Michael Baratz. I'm the Chief of Staff for SEIU Local 1000. We represent 87,000 state workers in virtually every classification, white collar to blue collar, that one could imagine.

I guess we're one of the friends of labor that Mr. Burton didn't, you know, related to. We do not agree, and we are opposed to this appointment. We urge the Committee to join us in ensuring that the objectives of the State Personnel

Board are reviewed and carried out.

We expect a commitment from this board member, as well as all board members, to uphold the mission and principles of the State Personnel Board.

Given that this is a ten-year appointment, it is more important that the decision of this confirmation be carefully weighed before being finalized.

We can't speak to this nice platitudes that the previous speaker gave about openness and being willing to work out issues with our union. That's not the case. Our contract's been open for seven or eight months. We have not been able to get anyone to, you know, bargain or consider our issues in good faith.

When Ms. Clarey served as Chief of Staff to the Schwarzenegger administration, they came full frontal attack on our membership in terms of their budgetary and policy proposals to decrease employee compensation by 14 percent.

The proposed appointee, while working in government, also spent time as a lobbyist for the oil industry, private health care industry, has ties to those industries. We have questions about her ability to uphold the civil service system free of patronage, which would be compromised.

This year is a particularly crucial year for the future of state classification system. The Governor has put in his budget the goal of reforming the state's more than 4,000 classifications. The majority of these will go through the Personnel Board with little or no oversight.

We expect that each board member would work with

all employee representatives to ensure such changes are in the interests of all of those who have dedicated their career to serving the people of California.

The State Personnel Board appointees should, by nature, have a background in personnel, management from either side, labor or management, or even both sides are appropriate, or even a neutral from the mediation-arbitration side of life. There are many qualified people who can do that. That's the kind of person we think, rather than a political appointee, clearly, which is what this is. This is about giving a job to someone.

And we oppose this confirmation, and we would ask that the Committee find an appointee who can garner the respect of both labor and management for such an important position.

CHAIRMAN PERATA: Thank you, sir.

SENATOR ASHBURN: I have a question of the witness, please.

You mentioned concern about Ms. Clarey's past work on behalf of oil companies, in particular you mentioned. And then the following words were that she could not then be a fair member of the State Personnel Board.

I'd like to know what the relationship between those two are.

MR. BARATZ: Well, yeah. I mean, the first line of challenge and appeal, you know, in this position, you know, that we're concerned with is Government Code 19130, which requires corporations to demonstrate the cost savings of contracting work, or requires that there be real emergency, the

work be of a temporary nature.

We think that conflicts of interest exist with people, you know, and potentially exist with people with private sector experience and relationships, you know, who are looking to contract work.

SENATOR ASHBURN: So, anyone --

MR. BARATZ: We've had a number of decisions recently by the Personnel Board which were actually good decisions, finding that contracts were being let inappropriately, or that were not cost saving contracts.

So, we are concerned about people's orientation, where they come from, and what they may bring to what we think is protecting the integrity of work on behalf of taxpayers.

SENATOR ASHBURN: Did the firms with which Ms. Clarey was a spokesperson attempt to contract for work to be performed by the State of the California that otherwise would have been performed by civil service employees?

MR. BARATZ: I don't have the answer.

SENATOR ASHBURN: You're tying the two together. Then I'm even more astounded by your answer, that anyone who worked for the private sector in any way would have a conflict of interest. Now, that would disqualify, I think, probably every Member of the Legislature and probably everyone in the executive branch of government.

MR. BARATZ: I didn't --

SENATOR ASHBURN: You said that, sir.

SENATOR BATTIN: You said that indeed.

MR. BARATZ: The focus of my comments were based

on personnel background, labor management background, experience, which is what this board does for the most part, okay?

And the other piece of it is, we are concerned about -- there are people in the private sector, I'm not saying that, you know. That's not what I'm saying. So, you know, you can read that into it. That's not what I'm saying.

I'm talking about the kind of experience, the background that someone brings to a job like this, that you match experience and qualifications to doing this kind of work.

And that there is another -- besides the classification, the personnel side of what this job is, there is the contracting side of this work, and the oversight of contracts that are let in the state, you know, from state service. And that there have been, you know, examples of problems in those areas. I don't need to cite all of those. That's -- we know that those things have occurred, you know, with contracting.

SENATOR ASHBURN: You've got something on your mind, I can tell. Are any of those circumstances to which you're alluding directly related to Pat Clarey's --

MR. BARATZ: I can't say that.

SENATOR ASHBURN: -- employment history, involvement, past or present, or any of those?

MR. BARATZ: We're concerned about the appearance.

SENATOR ASHBURN: The appearance of --

MR. BARATZ: The appearance, that's all.

And again, as I said, the focus, our focus, is more concerned with personnel qualifications, labor management qualifications, merit system oversight qualifications, those kinds of things which this job is most importantly focused on.

SENATOR ASHBURN: The Chief of Staff of the Governor of the State of California would not have become intimately involved in details related to the personnel system --

MR. BARATZ: Not --

SENATOR ASHBURN: -- the merit system?

MR. BARATZ: I don't believe so. I don't believe in this --

SENATOR ASHBURN: The Chief of Staff does not involve themselves in policy details?

MR. BARATZ: Not with respect to our union, which brings rise to our opposition.

SENATOR ASHBURN: Thank you.

SENATOR BATTIN: Do you believe that Ms. Clarey is not qualified to be competent and able to handle this job?

MR. BARATZ: I don't believe she's qualified on its basis. No, I don't believe so. I don't believe her past experience qualifies --

SENATOR BATTIN: You don't believe she's capable?

MR. BARATZ: Maybe she could learn on the job. I'm not saying anybody can't learn on the job.

But if you look at it from the perspective on who you -- you know, as a hire to a job, no, I don't think her resume fits what I believe that the responsibilities and the

functions of the State Personnel Board are.

SENATOR BATTIN: So, you would say that that would be in terms of the ability to do job, that this position would rank higher and more difficult than being the Chief of Staff of the Governor of the State of California?

MR. BARATZ: They're different jobs.

SENATOR BATTIN: But I didn't ask you whether you thought that she was --

MR. BARATZ: Do I think --

SENATOR BATTIN: -- had a bias. I asked you if she was capable.

MR. BARATZ: You're asking me if I'm assuming she was a competent, qualified Chief of Staff of the Governor of California. I don't necessarily, you know, I'm not here to -- I have my opinions about that on my observations and our working or nonworking relations with that office. But, you know, I'm not -- I don't believe I'm here to grade her on that job. It didn't -- it wasn't particularly effective from our perspective.

SENATOR BATTIN: Back to what Senator Ashburn had asked you about, it's on the record, and I'll spare you from going back and finding it. You did say at one point, because it got me up and Roy pursued it, which was that you didn't think that anybody who had any private sector experience, you said that they had biases, that they would come in with a bias.

In the future, because we'll be here awhile, on all appointments should we expect you to hold that same --

MR. BARATZ: That's not what I said. That wasn't the context in which I said it.

You also have a letter from the President of our union that goes into the issue and how he characterizes it.

No, I'm not making a blanket statement that anybody from the private sector can't do this job, okay?

SENATOR BATTIN: Just Pat Clarey is what you meant.

MR. BARATZ: No, I alluded to her lobbyist functions, the connection to the contracting aspects of the job.

But I also am emphasizing what I consider to be the personnel experience that I think is more, you know, more in weighing the job and its importance that is more important to this consideration.

SENATOR BATTIN: Okay, thank you.

CHAIRMAN PERATA: Senator Cedillo.

SENATOR CEDILLO: Just on this point, though. I mean, there is a point to that, though, that people who come exclusively from the private sector do not have, in my experience, an appreciation for the civil service commission, do not have necessarily an understanding of the private sector and its role as it relates vis-a-vis the public sector, and the public sector vis-a-vis the private sector. And so, that is challenging.

I don't know necessarily, if you look at the resume of the candidate, that it applies in this case.

But there are clearly some fundamental problems when people come -- and some of it, I think, people come from the private sector simply unaware of how the public sector works. And there are some instances, there is a general sense

that in some instances the public sector should work distinct from the private sector because our missions are distinct. Our goals and objectives are distinct.

So, whether it's, for example, in the provision of health care from the public sector, it's distinct from the private sector. It's not profit driven.

It's not to say we shouldn't have efficiencies and be effective, but there's a different mission. It applies differently to research and development. It applies differently to how we deal with emergency services.

I mean, the public sector is distinct from the private sector and should be because the missions are distinct.

So, I think -- not to speak for the witness -- but that is where the discussion should take place about the qualifications of a candidate for this position, and any candidate for this position.

That contracts are not signed is problematic. And the question is, is that problematic of the administration, the appointing power, or the candidate?

But it is very fundamentally problematic, should be deemed unacceptable that contracts are not signed and linger, given the mission of the state and given the mission of the entities that these organizations represent, and the role of that workforce in our state in the function of our state.

I think the point is that sometimes there's a lack of appreciation from the private sector for the interrelationship of the private sector to the public sector.

SENATOR BATTIN: Ms. Clarey, how long have you

worked in the public sector?

MS. CLAREY: For 15 years, 10 years of it in state service.

SENATOR BATTIN: So, we have a hybrid here, someone who understands both worlds.

CHAIRMAN PERATA: Hybrid?

[Laughter.]

SENATOR BATTIN: Popular term in the Legislature right now.

CHAIRMAN PERATA: It's the high watermark or the low watermark.

Yes, next speaker, please. Don't get comfortable; you're not going to talk that long.

[Laughter.]

MR. BRENNAND: I haven't written that much.

Mr. President and Senators, Terry Brennand on behalf of the State Council Service Employees.

With all due respect to my old dear friend, Senator Two Watches, I have to oppose this confirmation. And it's more in terms of the perception of public employees out there relative to Ms. Clarey's history. She was the Chief of Staff when the Governor took on an all-out assault on public employees: teachers, firefighters, public employees.

She then left that position to take a campaign position in the failed assault on public employees last November. And SEIU does not believe we should reward her with a ten-year appointment where she's in a position to continue overseeing or dealing with the state employee organizations for

the next decade.

There are many positions in state government and appointments to which she could be appointed that we would not have any opposition. It's the nature of this one, and its relationship with the state employee organizations that causes the problem, because long after all of you here are no longer in the Senate, that position will be in existence and continue to be in a position to deal, rightly or wrongly, with our state employee membership.

For all those reasons, we'd ask your no vote on the appointment. Thank you.

CHAIRMAN PERATA: Thank you.

Next.

MS. VEGA: Mr. Chair and Members, Caitlin Vega with the California Labor Federation.

Terry outlined on behalf of SEIU exactly what concerns are as well, which are essentially all of the anti-worker, particularly anti-public employee initiatives and proposals that were promoted by this administration during the time that Ms. Clarey served as Chief of Staff and also as a campaign consultant in last year's election, give us deep concern considering the importance of the State Personnel Board to California workers.

So, we are here to oppose this nomination.

And we would also remind this Committee that the State Personnel Board has a representative on the Cal PERS Board, and we're particularly concerned about the impact of having a representative who might support the demolition of the

public pension system on that board.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. BALL-HAWKINS: Senator Perata and Members, I'm David Ball-Hawkins with the California Faculty Association.

I apologize for the lateness of our opposition. We just completed the process last night.

But we do agree with the previous speakers for the reasons that have been stated. We are very concerned about Ms. Clarey's role in the assault on public employees that occurred under her role as Chief of Staff for Governor Swarzenegger, and we are strongly opposed to the appointment.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

Next.

MR. GOLKA: Good afternoon, Mr. President and Members the Committee. Joshua Golka with the American Federation of State, County, and Municipal Employees.

We also share the concerns voiced by the previous groups regarding Ms. Clarey's role in the administration and subsequent special election.

CHAIRMAN PERATA: Thank you.

Anyone further?

Now back to Senator Bowen.

SENATOR BOWEN: I actually don't have questions at this point.

We've been through a very devisive time in California, and the Governor was pretty clear after the November

election that it was time to start over again and try to work together.

I personally like the nominee. I think she's very competent.

But I think this moves us in the wrong direction in terms of the signal that it sends about working on issues involving state employees.

We had that same kind of issue actually when we had an Air Board nominee who had come out of industry, and I shared similar concerns with workers comp, on the workers comp issues.

So, I plan to cast a no vote. It has no reflection personally on the nominee, but I think it doesn't further our ability to set aside the devisive issues of the last two years dealing specifically with public employees at this time.

CHAIRMAN PERATA: Other Members?

SENATOR BATTIN: Mr. Chairman.

I know I like to nominee well. We certainly have policy differences. It's real clear, and there's a couple of issues that we definitely, definitely see eye to eye on.

Nevertheless, it does not mean that she is not qualified or capable of doing an outstanding job, which she will.

You have to admit that being in the position of Chief of Staff for the Governor of California, whether it's a Republican governor or Democrat governor, is a really demanding job. Being Chief of Staff to the Governator is that times its

own unique factor, because it's just more than that because of the popularity and celebrity that he brought into the job.

Ms. Clarey handled it very capably, and she did a good job, and she got lots of pressures from all sorts of different people.

We've got to make sure that we, on this committee, allow the Governor who won the election to have his choices on who he would like in his administration. And unless they are incapable of doing the job, unless they are corrupt and cannot do the job, then it is, I think, our duty here to let the Governor run his government the way he chooses to do that.

And having said that, I will move the nomination.

SENATOR ASHBURN: I have questions, Mr. President.

Do you have any agenda in becoming a member of the State Personnel Board that may be related to your past work in the Governor's office?

MS. CLAREY: No. The State Personnel Board has a very specific set of jurisdictions. I will stay within those and do the best job that I'm capable of doing.

SENATOR ASHBURN: You've heard the criticisms. What I hear is an attempt to make you personally responsible for decisions of the Governor on policy matters that he pursued.

Could you is describe for the Committee the way in which you personally -- because you're sitting here as the nominee and not the Governor -- the way in which you personally deal with the role that you just served in as Chief of Staff, in dealing with decisions made by the Governor about which you

might have your own point of view?

MS. CLAREY: Every decision I made working for the Governor I believe was made fair and open. I support the Governor. I will support the Governor, and I did support the Governor.

So, you know, private conversations and private policy discussions aren't really relevant here, I don't believe.

SENATOR ASHBURN: Do you believe that now, should you be confirmed to this new position, that that carries forward? That your duty and obligation is to carry out the Governor's policy and initiatives, or to act independently, using your own judgment as a member of the Personnel Board?

MS. CLAREY: The Personnel Board is an independent board. And I come with my qualifications, and I will vote and support as an independent member.

SENATOR ASHBURN: Just to go back on this issue of qualifications that were called into question because at one time you were a lobbyist for private sector firms, how would you describe the scope of your personnel responsibilities in the governmental service that you've had?

MS. CLAREY: I've never been a lobbyist, even though I read it in blogs all the time. I've never been a registered lobbyist for anybody.

My experience in state personnel is working for the Governor's office from 1990 to 1998, where I handled the personnel portfolio inside that office, and for the last two years working for Governor Swarzenegger.

SENATOR ASHBURN: So you've had hands-on

personnel management responsibility in the positions that you've held --

MS. CLAREY: Yes, I have.

SENATOR ASHBURN: -- in state service?

MS. CLAREY: Yes.

SENATOR ASHBURN: Which clearly separates you from the concern that was raised about never having had public sector personnel management responsibilities, and being strictly an outsider, and therefore unqualified.

MS. CLAREY: Correct.

SENATOR ASHBURN: Well, I think you're eminently qualified. I think every Senator can attest to the fact that you are an honest person, that you have good judgment.

And I think if we all really look at our hearts, the job that you had is the job that others who serve as administrative agents for policy makers have, and that sometimes you have your own point of view, and then the boss has their point of view.

I think you did your job very well, and I think that in no way does that disqualify you from being a strong and independent judge of fairness in the personnel system. So, I'm actually proud to cast the vote in your support.

CHAIRMAN PERATA: Senator Cedillo.

SENATOR CEDILLO: Thank you.

I have, I think, some very legitimate concerns have been raised. Of course, you and I are friends. We spend the afternoon having a great time yesterday.

I wish my other friends on the other side of the

political spectrum had brought these concerns to me sooner. It's a little dilemma for me, but that's life.

I need to hear, and I think people need to hear, that there are certain things that are important, as Senator Ashburn raised. One, that you were serving, fully aware of your responsibility, obligation, to fulfill the mission and the principles of the commission, of the board.

MS. CLAREY: That's true. That's why I was appointed, and that's the way I will serve.

SENATOR CEDILLO: I think there are certain things in terms of the private sector -- the public sector, rather, that are important, and that they need to be respected. I think the Civil Service Commission needs to be respected. It's not the private sector. There's a different mission. The state has a different role, and I think that we should covet that.

Does that create any conflict for you?

MS. CLAREY: No.

SENATOR CEDILLO: I am concerned when contracts are not resolved promptly. It is just bad for business. That is a cross-over. That's problematic in the public sector, but I think it's particularly problematic -- it's necessary in the private sector but particularly problematic in the public sector.

Do you agree that we should do all that we can to expedite and make sure that contracts are resolved within their time limits?

MS. CLAREY: Yes, I do.

SENATOR CEDILLO: I heard the reading of what the code says on out-sourcing. Frankly, I don't agree with it.

But my understanding of it is that out-sourcing is to be utilized only for an emergency nature -- when we have a flood; we have a breaking of our dam system; we have some earthquake and we need to have the personnel available to do a job. That's one.

And the other, that there has to be some demonstrative cost savings. I don't know what the criteria for that is. I find that less compelling.

But as the code is written, that doesn't present any problems for you in terms of implementing or participating in your role?

MS. CLAREY: No, it doesn't.

SENATOR CEDILLO: All right.

There's a couple things here. Senator Burton said that you're a person of your word. I believe that. You and Richard Costigan, who's here, and Bonnie Reece, we met early on in the new administration. The Governor and I have an agreement, yet to be realized completely.

But I think the question for us really is kind of a matter of principle. Do we blame children for the acts of their parents? Do we blame employees for the directives of their employer?

We obviously want employees to be responsive to their employer unless it's creating a danger or harm, or it's some illegal act. So, that's the principle at hand for us.

The Governor has a right to nominate. We haven't

had an opportunity to see you perform yet, but we do have a record. And I agree with my colleagues and with Senator Burton, you're trustworthy, your word is your bond. If you say something, you mean it. We believe you, and we can do what we have to do with respect to that. So, I think that's critical.

So, the criteria for denial is whether or not you have the competencies and whether or not you understand your duties. I think that's the main point.

This is almost a nonpolitical decision if there can be one made in this context.

I think that's it.

SENATOR BOWEN: Senator Perata, I do have a question.

One thing I want to clarify. I was looking at your resume, and it says 2003 to the present, Chief of Staff to Governor Swarzenegger.

But then I was looking at your Schedule C, and it lists significant consulting income from Californians for Schwarzenegger and the California Recovery Team, but neither of those positions are listed on your resume.

Can you talk about what your role was on the Prop. 75 campaign or other special election activities? It's not laid out in your resume.

MS. CLAREY: I took a leave of absence from the Governor's office in September, from September to the day after the Special Election. I was off state payroll, and I worked on the Special Election for the Governor.

The CRT did not -- I had no active role in the

Prop. 75 campaign, never spoke publicly for or against it, around it. But I did work on the campaign.

SENATOR BOWEN: On the Special Election campaign.

MS. CLAREY: Yes.

CHAIRMAN PERATA: I worked against it.

MS. CLAREY: Many did.

SENATOR BOWEN: I think there probably aren't too many people in this room who didn't work on it.

But why do you think there's a perception that you worked on the campaign to promote Proposition 75? It seems to be a pretty common perception.

MS. CLAREY: The Governor endorsed Prop. 75 somewhere late in the campaign. I was on the CRT payroll, which Prop. 75 was not a part of the California Recovery Team. That was a separate campaign.

He endorsed it. I did not work on a campaign that endorsed Prop. 75. The Governor himself personally endorsed it.

SENATOR BOWEN: Thank you.

CHAIRMAN PERATA: Well, first of all, I can stipulate to the fact that while we have obvious political differences, in the time that I've had the opportunity to work with you, I have no doubt that you value public service as highly as I do and my colleagues.

Your sense of fairness and your personal integrity are beyond reproach. Those are qualifications that are too often unseen when we're making appointments.

You've also had 15 years of public experience,

public service experience, which leads me to believe that you probably share some of the same genes that I do, and God have mercy on both of us.

I just want to publicly thank you for those years, specifically the last couple that I had an opportunity to work with you.

But I think anybody who criticizes those of us who work in government couldn't begin to imagine the number of hours that you put in. You probably lived four lives last year. For whatever glory that they think jobs like yours bring or ours, there's a huge personal toll that's taken, and I recognize that.

I have concerns about, as you've heard me say publicly and privately in this forum on many occasions, about the way in which public service is devalued. And I think it's highly understandable that people who are giving their lives, particularly to state service, because there are so many people now who, even if they choose to go into public service, can find a much more rewarding, or equally rewarding and far more compensatory resolve to their commitment if they're doing it in regional government, local government. We had somebody that was a fire official here that went to work for a local agency and made $60,000 a year more. So, it's really something that we need to look at.

You have ten years ahead of you in your position. None of us here have -- and God, I'm just speaking about the investment. I've got to make that clear. When I talk term limits, I don't want Him to think I'm confused about life

and service.

[Laughter.]

CHAIRMAN PERATA: But you've got ten years ahead of you, and you will therefore play a role, not only as you have but in the future about our institutions. And I just believe from my experience with you that you share some of the fundamental values.

What I'd like you to look at are the less glamorous things, but the fact that we have lost seven or eight thousand public employees that I know of in one of the bargaining units here over the past ten years, at a time that our population has not only grown, but the complexity of those we serve has compounded. So, we're asking more of those people we have.

And when they are out of contract for a period of time, and that's really on me. I mean, I will always protect the Public Employee Retirement Service. I will protect as I can in my position the rights of public employees.

But, you know, all that we can do is to try to show by action and deed the honor that we place on public service.

And I just commend that to you, not that I think you need any reminding, but that this is something that goes from me to you as we do your confirmation.

And the one thing that I've learned about, and I never thought I'd be talking this way, is about compaction. I always thought that had to do with garbage. But I have learned that not only is it harder and harder to get people attracted to

state employment, but people who are making it a career find that it's no longer possible. Which is why I think people sort of train here, get good at their jobs, then go someplace where they can grow.

You've got the skill set, the intelligence, and range of experience to really look at some of those issues. I'm sure you will, but I want to give you a little "oomph" as you go off.

I am really proud to support you for this position. And on behalf of those of us that we struggled with together, and whose lives we have found ourselves in a position of influencing, it was if not always a pleasure, it certainly was an honor. And I commend you to ten years of good service, ten more good years of service.

With that, please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: No.

SECRETARY WEBB: Bowen No. Cedillo.

SENATOR CEDILLO: I want to --

CHAIRMAN PERATA: Pray?

[Laughter.]

SENATOR CEDILLO: That too.

SENATOR BATTIN: He is so dramatic.

SENATOR CEDILLO: At least I won't mention the vehicle license.

[Laughter.]

SENATOR CEDILLO: As the Pro Tem has said, you're a leader; you're a friend. I will be happy to vote for you.

But I am concerned. There are some concerns that I have that are legitimate that have been raised. It's just a couple principles.

I think contracts should always be on time. I think there's no place for regressive bargaining in the public sector.

I think, as the Pro Tem said, we should covet the public sector workforce. It is the face of California. It is what people think of and what they relate to when they think of the state.

The public sector unions have not had an opportunity for them to see your performance in this new capacity, so I am asking them. We are going forward on faith that our work experience, even though we have disagreed on some points, that our work experience has been such that we have, the Pro Tem and I, confidence that you are a person that everyone can work with, that things are straight forward, that you're an honorable person, a person of your word.

I think that is key to keep in mind as you go forward in a different position with different duties and obligations at the State Personnel Board is that the Personnel Board, the people who work for the State of California, it is their board for their interest, for their purpose, for their service. And that that is a distinct and unique role that we want you to be successful in.

I am glad to vote aye and support your

confirmation.

SECRETARY WEBB: Cedillo Aye.

SENATOR CEDILLO: But I say so with those admonishments.

SECRETARY WEBB: Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to one.

CHAIRMAN PERATA: Congratulations.

MS. CLAREY: Thank you.

We'll take a brief minute.

I'd like to ask David Thorman the State Architect, to come forward, please.

Welcome.

MR. THORMAN: Thank you.

CHAIRMAN PERATA: Proceed, please.

MR. THORMAN: Thank you.

Senator Perata, Members of the Rules Committee, thank you for the opportunity to speak.

I hate to say this, but I've had 40 years in the private sector.

[Laughter.]

CHAIRMAN PERATA: Anything further.

[Laughter.]

MR. THORMAN: I am an architect by birth -- my dad was an architect -- and by training, and by profession. I have always focused on the management side of architecture

rather than the design. I have, as I said, 40 years of experience nationally, ten years of that specifically in California.

I've worked as not just an architect but a construction manager and a program manager, and most of my work nationally and in California, probably 75-80 percent of it has been with K-12 and community colleges.

I see this position as an opportunity to improve our processes so that we provide more timely, accurate, and consistent plan reviews and approvals. I also see it as an opportunity to contribute to the construction of safer, more sustainable, more accessible, and more cost effective buildings throughout California.

You have my goals in front of you, so I'm not going to go through those.

But I would like to cover five points very briefly that I think are particularly timely.

The first is, reduce review time. I'm sure that all of you have constituents who are concerned about how long it takes to get plans through DSA. Being in the private sector, I dealt with that personally through the firms that I worked with.

I want you to know that we are understaffed by 72 positions out of 311. We have a very aggressive recruiting plan that's in place. We have two people dedicated full-time. We are at conventions; we have a booth. We're doing everything we possibly can to fill those positions, and I think we have a good shot at having them filled by the middle of this year.

Forty-five of those positions are professional, structural engineers and architects, which are very difficult to find. The private sector is very busy, and we're competing with much higher salaries.

But we're also working between our offices, or load changes, but we're balancing our load. We have a particularly tough load in Southern California in both our Los Angeles and San Diego offices.

We are also working closely with the K-12 and community college districts and the design professionals in terms of the quality of documents.

What I've found since I've been in this position for the last ten months, that part of the problem that we have is that when we do get documents from architects, they're not as complete as they should be. I'm working with the different organizations to help in that regard, and I'll talk more about that shortly.

We are doing pilots, or the beginning of doing pilots with two specific districts, two very different areas. One is LAUSD. They have, as you know, a major bond program, their fourth, and we are working with them as partners along with their architects to try see if there's some ways that we can streamline the process, particularly for that district. Not to say that we're not taking care of the other roughly 1100 districts, but it is an opportunity because they do have some momentum.

We're also working, getting ready to work closely with the Inland Empire in terms of San Bernardino County and

others in that area. Again, it's a different environment. I think there's some different opportunities, but there's an awful lot of need. So, those are two pilots that we're working on that I think that we can find some new ways to do business.

The second point is that I believe that we need to revitalize the division. This division has been in place in different forms for 99 years. We celebrate our 100 years next year. We have been working on the Field Act for 73 years, and I think some of the same people are still there.

[Laughter.]

MR. THORMAN: Anyway, there is some -- there's some things that we can do, and this is where I bring my private sector experience to bear in terms of some management approaches and techniques.

We have been working with the community colleges. In fact, we just signed this morning, finalized, a Memorandum of Understanding, working with them on what we call collaborative process, which is going to change, I think, dramatically the way we do business. Instead of waiting for the architect turn in the plans when he's completed them, we're going to be working with the architect much earlier, using experience and knowledge that our people have with the architect, so that when they turn in the drawings, they are in fact a lot more sensitive and in compliance with the code.

We have what we call statewide teams that we've set up to look at our specialty areas -- structural safety, fire line safety, and access -- to make sure that we're consistent, because one of the other complaints I hear a lot about is the

inconsistency, not only between offices, but sometimes within offices. So, we're dealing with that.

We are looking at reorganization of our four regional offices to make them more effective and more efficient, and also more responsive to our clientele. We're probably going to have an office in the Inland Empire within just a very short period of time, at least a satellite to get started, so we're closer in terms of touch with our clients.

We're looking at electronic plan review. We have started. We're in place for that. We're now soliciting architects who are willing to work with us because, again, we think that can help a lot in terms of time.

We've started what we call the DSA Academy, which I think over time is going to revolutionize a lot of what happens in the area of school design and construction, and community college design and construction. It will deal with processes, procedures, codes and regulations.

We will work first with our own staff to make sure that they're at the highest level of understanding and knowledge of codes and processes, then with the consultants that we work with as we farm out work. And then, finally, with the districts. And then, if all this goes well and we have that under control, we'd like to start working with the counties and cities so that we raise the level of knowledge about codes and requirements, so they're consistent across the state.

The third area I'd like to just talk about briefly is working with our stakeholders. We can't do all of this by ourselves. We have an advisory board which is very

effective, which is made up of the professional community. We're working closely, and I spend a lot of time with different school and community districts. In fact, I was at the LAUSD Board meeting yesterday.

We have a close relationship with many professional organizations, including the Coalition for Adequate School Housing, the American Institute of Architects, the Community College Facilities Council, SFMA. I mean, there's a lot of them, and it takes time, but it's worth it, because once we have their cooperation, it helps us in terms of progress.

We also work very closely with the disabled community, which they'll probably testify to.

And one of the most important things, that we encourage cost and time saving methodologies. If there are ways that we can do things better and save money, we as DSA will cooperate, and work, and adjust our processes and procedures. As an example, design/build; another example is plan reuse where it's appropriate. Some areas it's not; some areas it is. We encourage that, and we want to work with them.

The fourth area is updating the code. We're in that process. We are going through an adoption package with the 2006 IBC, and this will have an effect, again, in terms of the clarity of the code and simplification, so it's not as complicated. Not changing in terms of what the requirements are; we want to stay with the Field Act.

Also, we are in the process -- and it's an arduous one; I think over all, it'll probably be ten years -- to get our certification from the US Department of Justice in terms

of the ADA Code. But that is in process, and that's in my letter.

Fourth [sic], and this is longer term, statewide policies. The Building Excellence Program was started several years ago. I want to continue that program statewide of safe, sustainable, accessible, and cost-effective public buildings. And I want to do that by revitalizing our ties with other state agencies. There are many state departments, agencies, and divisions that deal with the built environment. We don't necessarily talk to each other, and I think we should because I think we can learn from each other. I think we can come up with specific directions that benefit all of us. Organizations such as OSHPD, the California Department of Corrections, the Administrative Office of the Courts.

As you can see, I have a bold agenda. The good news is, I have an excellent, hard working staff, and I have the full support of Ron Joseph and DGS to accomplish these goals.

I thank you for your time. I would appreciate any comments, and I welcome your questions.

CHAIRMAN PERATA: Thank you, sir.

You really honed in on the top concern I have, and that's school construction. We've moved, as you've pointed out, a lot of bonds; LA Unified just did 4 billion.

One of the things that, as I've traveled the state, talking about infrastructure, the office comes up repeatedly. And I think as I've learned a little bit more about the State Office of Architect, and then what you've said, it's kind of tough that you're 45 positions down out of I don't know

how many professional staff you have, but that's kind of tough to get the job done.

MR. THORMAN: Very tough.

CHAIRMAN PERATA: I also recognize that you are in a very competitive world. And since California has been on a boom in building, I imagine that it is very hard to compete with what we pay.

MR. THORMAN: Very.

CHAIRMAN PERATA: I'm mindful of that, but I am a great believer in leadership and management. I think your 40 years, I think there are instances where we can learn something from the outside. So, I'm glad you didn't try to fudge the fact that you've been here for a long time, because we'd have found that out.

[Laughter.]

CHAIRMAN PERATA: I want to just underscore something that I'm sure is inherent in what you said, and that is that every day delayed is a dollar that taxpayers are spending that is not going to be constructive.

But we need to provide every assurance possible that we are sensitive to what we're facing, and that we're doing all that we can.

Also, a leader in your position has to not be too shy about saying to those of us who have the purse strings, "I can only do so much." I, for one, don't like to hear everybody who says, "We have to do more with less." Sometimes you have to do more with more. And don't sugarcoat it now. I don't know who in the org. chart you come under, but I know that sometimes

the agency people have a little bit more difficulty with that.

But I'm asking this rhetorically. You can just, whether it's in a plain brown envelope over the transom, I don't care. Just don't set up some damn blog site, please. But anything short of that, if you could provide us with what we need to know about things that we can help you improve upon.

But you are at Ground Zero with a lot of people in the construction industry in this state.

MR. THORMAN: We're aware of that.

CHAIRMAN PERATA: The more you can communicate with them, if there's anything you can do with OSHPD, including driving up a bulldozer, please call me.

[Laughter.]

CHAIRMAN PERATA: The other thing I wanted to ask you is about ADA, and what's going on there? What is the role of your office? And where are we, and where do we need to go?

MR. THORMAN: ADA over the last several years has become more and more critical. I think everyone's aware of that. There's a lot more sensitivity.

We're very active in terms of working with the disabled community. There are ADA requirements, national requirements. We're trying to align California's requirements with them. California's requirements generally are more severe, and we appreciate that and believe that that's the way it should be.

There is of necessity a balance with business. There needs to be a reasonable understanding, and details need to be worked out.

But we're in full support of the disabled community and ready to work with them. In fact, we have several things that we're going to be doing this next year that I think will further that cause.

CHAIRMAN PERATA: We had a confirmation hearing awhile back. What was the name of the group? The Building Standards.

One of the things that was remarkable in looking at it was the fact that there was not much diversity, ethnically or in gender, and there was a designated spot, I believe only one, for disabled. And we have been in discussion with the Governor's office about how to fix that.

But I'm just curious, how many disabled architects do you have? I guess that would be the ultimate insensitivity.

MR. THORMAN: I don't know the number exactly. I can think of three just off the top of my head.

I didn't mention the advisory board that we have. The advisory board has an access committee specifically, and the majority of that committee -- we've got two positions to fill, but once they're filled, the majority of that committee will be from the disabled community. So, I think that we're getting good input and have good information, and we'll be able to work with them closely.

CHAIRMAN PERATA: Just a final question from someone that's completely ignorant.

Are most of your plans that you check now, are they computer generated?

MR. THORMAN: Architects work on a computer on CAD, yes. But the link between taking those drawings and sending them to us electronically, which is where we want to go, and that's why we talk about being fully electronic, still is in the working stage.

We're set up for that. Most architects are set up for it as well, but they've never practiced it. So, that's part of the reason that I want to work closely with the architectural and the design community.

CHAIRMAN PERATA: Thank you.

Questions from Members?

SENATOR BOWEN: I should clue people in that Senator Burton's recently gotten two puppies, which he named and Timex and Rolex.

[Laughter.]

SENATOR BOWEN: His explanation when asked is that they're watch dogs.

[Laughter.]

MR. THORMAN: I don't have a watch.

SENATOR BOWEN: That's where Senator Burton got the other one. Watch that guy.

Thank you for taking the time to meet with my staff. A lot of the questions were addressed there.

The one thing that I was curious about is the proposal to use the state's bargaining power to purchase what are described as universal school components at reduced prices.

This is an issue that we've grappled with across the board because California -- I know we've grappled with this

with regard to vehicles recently -- we purchase a lot of vehicles. But if everybody does their own thing, we don't necessarily get the ability to negotiate for a better price.

I'm told that that's something that you're interested in doing. How do you envision that?

MR. THORMAN: In terms of building systems or building materials?

SENATOR BOWEN: Building materials, building systems, anything. And I think it's hardest to do with personal services because it takes however many hours it takes to do something.

MR. THORMAN: That's right.

There are opportunities. This is an area that I honestly have not gotten into. But when I talk about different ways that we can work with industry, with manufacturers, I would like to explore that. I think we need to, and I think that the director would certainly agree.

SENATOR BOWEN: Do you feel at this point that the guidelines and the work to create schools that are sustainable, and in particular energy efficient, are sufficient?

Sometimes we have increased construction costs, but when we look at taxpayer costs for the life of the building, if we do a good job, or spend a little more up front, we can significantly reduce operating costs. Are you satisfied --

MR. THORMAN: Absolutely. There's no question about it. It's unfortunate that the money for construction always comes out of one fund, and the operating out of another,

because there's always pressure to keep the costs down, but the reality is, if you spend a few dollars more initially, you're going to save tremendously on the operating side.

SENATOR BOWEN: Are you satisfied with the way that the requirements or the state law is working now in that regard? What improvements do you --

MR. THORMAN: Well, we're in the process of adopting chips which will require that certain sustainable activities are included.

Part of the budget, as I understand it for -- I'm sorry, the bond -- will include separate money for that. So, I think that's a step in the right direction. So that the districts don't feel like we're just, you know, hamstringing them with more and more cost without some relief.

So, we're definitely heading in the right direction.

SENATOR BOWEN: Good. If you need any help with that, it's issue I've worked on for a long time. I'd be happy to do anything I can to send the ball further in that direction.

MR. THORMAN: I appreciate it.

SENATOR BATTIN: Move.

CHAIRMAN PERATA: We have a motion to approve.

Anybody here who'd like to speak in favor of the nominee?

MS. WILLIAMS: Good afternoon. I'm Laura Williams, President of Californians for Disability Rights.

I'm here to express support for Mr. Thorman, but

also to ask for a commitment and a timeline, if it is possible to get that commitment, for when Title 24 will become certificated to ADA standards so that our local building officials can hold everyone accountable for the same standards and make certain that all of our buildings and communities are built to access standards.

MR. THORMAN: I can't commit at this point, but let me go back and work with my staff, and we will get you a commitment.

MS. WILLIAMS: Thank you very much.

CHAIRMAN PERATA: Thank you.

Next.

MS. D'LIL: HellO. I'm HolLynn D'Lil. I'm with the Coalition of Disability Access Professionals.

And we also support the appointment of David Thorman to be I believe it's the Division of the State Architect.

MR. THORMAN: Correct.

MS. D'LIL: He talked about this office being Ground Zero for construction. It's also basically Ground Zero for people with disabilities in this state because this office, this division, is responsible for basically what is a blueprint for our civil rights; that is, our ability to access the community.

That means our ability to get to education; our ability to become employed; our ability to participate in our community.

So, this office actually writes the standards and

the code that allows us to get into our communities.

And we've had some varied success and not success, unsuccessful work with the previous State Architects. Promises were made, and promises were not kept.

I just want to give you a quick example of one of those problems. I sit on the Secretary of State's Voting Access Advisory Committee. At our last meeting, and I also heard the same thing at a meeting with the Attorney General's Office, about the lawsuits. The Attorney General has sued the County of Santa Cruz and the County of Kern for not having accessible polling places. This comment was made twice in both places from an elections clerk who says we cannot use the local schools as polling sites, the new ones, the newly constructed schools, because they're not accessible.

So, this is just an example of how important it is that this office perform and enforce the accessibility standards that it writes. It sets not only a tone, of course, with the schools that it plan checks, but it sets a tone throughout the whole State of California on how accessibility requirements are to be viewed.

In February of 2004, Brad Ramp, who was the President of California Building Officials at that time, stated before the Coordinating Council of the California Building Standards Commission that, quote-unquote, "Access requirements, enforcement of access requirements are something that tends to fall off the table at the end of the day."

So, here we have the President of the Building Officials saying that they were not enforcing the accessibility

standards.

We have had, unfortunately, for a decade or more an attitude that accessibility standards are not important, or they're not given the respect that other building construction standards are, such as energy standards, or electrical code, or plumbing code.

It's also as if there's been a pervasive attitude that's been fostered that accessibility standards are somehow voluntary, even though there is, of course, substantial federal law and state law behind them.

So, we have been working with Mr. Thorman here, and we've received some commitments from him.

We also need help from the administration in general to make sure that he can follow through with those commitments. We had a bill, I believe it was AB 142, was passed in 2000. And it said that some of the plan check money coming in was to be used for education in the State Architect's office. And that money never got spent that way. And that's what we really need.

We have a commitment from Mr. Thorman that he will work with us, that we will have inclusion not only with his committee, but he will work toward, of course, the broader picture of inclusion of us in the community. But he needs the funds to do that. We need to be able to get building officials particularly trained, and architects trained, on what these accessibility standards are.

Thank you very much.

CHAIRMAN PERATA: Thank you.

MR. SKAFF: Mr. Chairman, Members, Senators, my name is Richard Skaff. I believe I saw you about two weeks ago at a not as pleasant event.

I am here today to support your supporting Mr. Thorman in his position as State Architect.

Ms. D'Lil described some of the history we've had with the State Architect's Office. And Mr. Thorman, I'm pleased to say, my experience so far has been very positive.

My first question to him was, what was your relationship with the Governor as a Governor appointment? And he said, "I was appointed on my experience and knowledge, not as a political appointment," which I think, whether I'm a Republican or Democrat, goes a long way.

As a professional in the area of building codes, I've experienced the effect of not having somebody in that position that took the issues relative to disability access seriously. And from what I've seen so far with Mr. Thorman, that's changing dramatically.

In fact, in the last few weeks Mr. Thorman's made a specific commitment to some major changes, one of them being the development of interpretations of California access codes so that there isn't confusion among those within the design and construction community; that is, there is one voice.

Although the State Architect's Office doesn't have authority to make local interpretations, if the State Architect's Office puts out a book, an access code book, with interpretations, I think the general process will be locally to follow those interpretations, which means that those of us that

are affected by the access codes and the enforcement of them will finally start getting consistency throughout the State of California in the way the codes are enforced.

I want to commend Mr. Thorman for his last ten months and ask his continued support for the disability community, and his continued interest in our needs and support for us.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

Next.

MS. RIKER: Good morning or afternoon. My name is Jean Riker.

I am new to the disability community as far as knowing a lot about access codes. And one of the things that I'm very interested in having you -- that you know them, and you, I guess, you really support us.

And thank you very much, and I look forward to meeting you more and more.

Thank you.

MR. THORMAN: Thank you.

CHAIRMAN PERATA: Thank you.

You can't imagine the contrast between the last meeting and this one.

[Laughter.]

MR. RAYMER: Thank you, Mr. Chairman, Senators. I'm Bob Raymer, Technical Director with the California Building Industry Association.

We've been working very closely with the five

state agencies, including the Division of State Architect, in the shifting of California from one building code that's about ten years out of date into the new international building code. And what has worked out very well -- even though this is a mountain of technical information that has to be absorbed and analyzed, thousands of pages of very technical documents -- the Division of the State Architect is going through it very efficiently and very quickly. And the program that they have set up is being used a blueprint for several other state agencies.

So with that, we're strongly in support of this confirmation. Thank you.

CHAIRMAN PERATA: Thank you.

MR. COOKNICK: Mr. President, Senators, Kurt Cooknick, representing the American Institute of Architects, California Council.

David may not have a watch, but he certainly knows the time of day, as you've witnessed today with what he's done in the past ten months at the DSA.

And I think you'll see why it was so easy for us to endorse his appointment by the Governor, and why we're here today requesting your support for his confirmation.

David's not only born, educated, and trained in the profession of architecture, I think it's his passion. I've spent the past ten months with him, and I'm very, very proud to know him. He is truly a model of what we would like all our members at AIA to be.

And I think that I'd like to summarize everything

about him in this position as State Architect in my first meeting. Not only is David an architect, he also served as a Lieutenant Commander in the Navy, as you'll see from his resume. And the first meeting I attended with David, I got to witness that he listens, he asks questions. He says, "I don't know about that. Let's talk about that."

That's a very unique skill set and quality, and something I took back to my Executive Committee and said, "We're going to be okay here with this one."

I think, looking at what he's been able to accomplish with his collaborative nature in the past ten months, makes me very anxious for the future. I think you won't be disappointed by confirming this man today.

Thank you.

CHAIRMAN PERATA: Thank you.

Yes, sir.

MR. ADLER: Mr. Chairman, Members, Lee Adler, representing the Structural Engineers Association of California.

We have worked closely with DSA historically over the years, and we do have members on the advisory committees. And we do strongly support the confirmation of Mr. Thorman.

Also I support him as a former Navy Lieutenant Commander myself.

CHAIRMAN PERATA: Stick together.

MR. WHEELER: Good afternoon, Mr. Chairman and Members. Matt Wheeler, representing the California Building Officials, 500 local jurisdictions, building departments,

statewide.

We're very pleased to get up here in support. I'm the last one, so I'll make it short and sweet.

We've had a good ten months so far and look forward to another long tenure. Appreciate it.

CHAIRMAN PERATA: Thank you. He thought he was the last one.

MS. BERGAN: Cheryl Bergan from the California Foundation for Independent Living Centers.

And I just wanted to echo what my colleagues said, and to remind everyone that our demographics are changing, and that accessibility isn't going to -- it should never be an option.

But as we look forward, we need to go beyond what is required and into what is necessary.

Thank you very much.

CHAIRMAN PERATA: Thank you.

Members, we have a motion to approve. Any discussion?

Again, I want to thank you, and I want to underscore the fact that it's not all that frequent that we have someone come before us that has support from both the professional and the advocacy communities.

MR. THORMAN: Thank you.

CHAIRMAN PERATA: So, I congratulate you.

I have one question. Did Rice drop football right around the time you were there?

[Laughter.]

MR. THORMAN: Yes, they did. As a matter of fact, my junior year.

CHAIRMAN PERATA: Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

MR. THORMAN: Can I introduce --

CHAIRMAN PERATA: Oh, I apologize. Yes.

MR. THORMAN: First I'd like to introduce my daughter, Kendall.

Next to her is my girlfriend, more than girlfriend.

CHAIRMAN PERATA: Almost stumbled on that.

[Laughter.]

MR. THORMAN: I'm not quite sure how to say it.

Sitting next to her is my almost mother-in-law, Maxine Roberts.

And watching on television is my other daughter, Caillouet.

CHAIRMAN PERATA: Feel very proud of your dad. Thank you very much.

MR. THORMAN: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:05 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of February, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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AUTHORITY

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January 23, 2006

Senator Don Perata
Chairman, Senate Rules Committee
Room 400, State Capitol
Sacramento, CA 95814

Dear Senator Perata:

I appreciate the opportunity to outline my views for you with respect to the California Bay-Delta Authority. As you know, the Authority recently completed an independent fiscal and management review conducted by the Little Hoover Commission and the Department of Finance. As a result of those investigations, the Authority has written, at the direction of Governor Schwarzenegger, a CALFED Bay-Delta Program 10-Year Action Plan. This plan includes future initiatives and schedules in the areas of governance and program and fiscal management. In addition, the Program is refocused on the Delta and program priorities are established. I believe this effort has also been responsive to legislative committee suggestions for changes in CALFED made during my tenure on the Authority.

Key elements of the 10-year plan to address governance issues include the following:

- Establish the Executive Leadership Council. A new state/federal agency group modeled after the former Policy Group will be established. The council will be comprised of the directors of the state and federal implementing and regulatory agencies and will be chaired by a state lead, the Secretary for Resources, and a federal lead appointed by the Secretary of the Interior.

- Independent Oversight. The California Bay-Delta Authority Board will be eliminated and the administration will work with the Legislature to restructure the California Water Commission to provide independent review and oversight over the CALFED Program.

- Establish a State Policy Advisory Committee. The plan recommends that the administration work with federal partners to establish a state policy advisory committee to advise and make recommendations to both the state and federal implementing agencies.

JAN 24 REC'D

While there may be other approaches for changes in CALFED, it has been my experience that since the Governor must be ultimately responsible for CALFED's success he should be given some flexibility for structure and management. I support these proposed efforts to reorganize the CALFED Program and I look forward to working with the Legislature to make the statutory and administrative changes necessary to implement the Plan, with input from the legislature. Timelines for decision making by the Authority or its successor should be maintained and not delayed regardless of other changes made in this process.

To provide funding for California's critical water infrastructure needs, the Governor is proposing a Strategic Growth Plan for the next ten years. This finance plan will significantly affect the CALFED Program, as well as many other water and ecosystem programs, at the state, regional and local levels. The Governor's plan includes new general obligation bonds and a new revenue source, the Water Resources Investment Fund that establishes a statewide capacity charge. This proposal provides the opportunity for discussions to take place on water infrastructure finance and should be linked to decisions currently planned on storage and resolving the Delta transfer issues with respect to water quality, quantity and environmental protection. I am sure you will agree with me that failure to act in a comprehensive and cooperative way will truly signal an inability to make the critical decisions required for our children and grandchildren.

Until new funding sources become available, the CALFED 10-Year Action Plan identifies existing funding in the near-term (Years 6-8) to support implementation of the Program's highest priorities. For the remaining seven years, the plan describes possible directions and funding ranges for the Program that is based on critical decisions that must be made in the future.

These are ambitious plans and goals, but we must move forward together because California's future demands that improvements in water supply, water quality, and the environment cannot and should not be delayed any longer. I am committed to ensuring the success of the CALFED Program and I look forward to working with the legislative process, which I respect, to ensure that these plans and goals are met for all Californians.

Sincerely,

Bill Jones

cc: Nettie Sabelhaus, Appointments Director

11/20/2006/MON 02:39 PM

Member Patricia Clarey
California State Personnel Board (CSPB)
Goals

Role of the California State Personnel Board (CSPB)

The CSPB is an independent constitutional agency responsible for ensuring that the state has an effective and efficient merit civil service system. The CSPB is responsible for the establishment of qualifications for state positions, outreach and recruitment activities to attract candidates to apply for state positions and the development and administration of entry and promotional examinations. We also review and adjudicate disciplinary actions involving state employees and we are responsible for the resolutions of a variety of appeals and complaints filed by employees, unions, job applicants, and citizens. The CSPB directs the state civil service equal opportunity program and monitors and provides guidance and assistance to state departments. We strive for a civil service workforce that reflects the diversity of California while providing equal employment opportunity to applicants and employees. In addition, the CSPB provides language assistance to clients and customers with limited English speaking skills. Finally, the CSPB ensures that local welfare, emergency services and child support services programs comply with federal merit system funding requirements by administering these local personnel systems or by auditing these programs for continued compliance with state and federal requirements.

Goals

1. Ensure an adequate number of qualified and diverse employees for the future to carry out the state's mission

   Today, California's state government faces a massive change in the composition of its workforce. In relative terms, our state workforce is old, growing older, and preparing to retire in record numbers. State leaders expect, for example, that between one-third and one-half of our state's current workforce will retire within the next five years. The following statistics prove this point:
   - More than 68% of the state's current civil service workforce is at least 50 years of age (compared to 50% of the general workforce population).
   - The number of state employees at least 50 years of age will increase to 80% of the state's workforce within the next five years.
   - More than 60% of Career Executive Assignment (CEA) employees are at least 50 years old and are currently eligible to retire; this number also could grow to 80% within five years.
   - Supervisory and managerial classifications, including CEAs, will be hardest hit by near-term retirements.

The question is not *if* these individuals will retire, it's *when*. And when they do, state government needs to have a plan on filling the gap they leave behind. Workforce Planning is essential during this period of transition to ensure that services to the public continue.

P.002

JAN/30/2006/MON 02:39 PM

SHORT TERM

- Develop and offer training opportunities for departments on Workforce Planning
- Develop a Human Resources Portal which combines the DPA and SPB websites
- Vigilantly monitor the civil service workforce to ensure equal employment opportunity

LONG TERM

- Streamline hiring process
- Coordinate statewide recruitment programs
- Implement broad and inclusive recruitment strategies

2. Increase Use of Technology to achieve the basic missions of the State personnel board

As California continues to grow (about 500,000 new residents are added each year) state government must the meet the increased demand for services. Taxpayers have made it clear that higher taxes are not the solution to meeting these demands, so greater effectiveness in the delivery of services is required. Information technology is a key factor in the ability of state government to provide more efficient and effective delivery of services. Some priorities identified that are important to customers are:

- Further development of internet and technology based channels for the delivery of state information and services
- A need for consistent and accurate data that will interface with other systems as necessary
- The assurance that confidential information is secure

State government must manage its information technology resources effectively to provide the needed programs to the citizens it serves.

SHORT TERM

- Develop a process to identify, recruit, and examine potential candidates for IT classifications
- Review services provided that can better utilize technology including more on-line features for selection of state employees

LONG TERM

- Continue to look for new ways to provide information to employees, stakeholders and the general public through the new Human Resources Portal and other appropriate means

P. 003

CALIFORNIA LEGISLATURE

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DON PERATA
CHAIRMAN

January 4, 2006

David Fredrick Thorman, State Architect
Division of the State Architect
Department of General Services
1102 Q Street, Suite 5100
Sacramento, California 95814

Dear Mr. Thorman:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as the State Architect on February 1, 2006. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We would like to receive an updated Form 700, Statement of Economic Interest, by January 23, 2006. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Following are questions that we would like you to address in writing prior to the hearing. Please respond by January 23rd so committee members will have sufficient time to review the material before your confirmation hearing.

1. General

   Please provide us with a brief statement of your short and long term goals. What do you hope to accomplish during your tenure as the State Architect?

2. School Construction

   In the past, many individuals and organizations knowledgeable about the school construction approval process have complained about the length of time it takes to complete the review of school construction plans. A few years ago there was a six- to eight-week wait (referred to as "bin" time) before the Division of the State Architect began its review of proposed school construction projects. The process was somewhat streamlined in 1999.

What is the current bin time or the time it takes your office to review school construction plans? Does your division have enough staff, engineers in particular, for the review process?

School construction can be episodic, influenced by availability of state and local bond funds.

How does your division handle the unevenness of the number of school construction plans it is called upon to review? Are there any measures which could simplify the plan checking process while also reducing costs associated with design and construction delays, e.g. using standardized designs? What is your position on the reuse and/or sharing of school plans among schools and districts? How do you view the utility of developing model or "stock" plans at the state level for use by school districts?

3. Portable Classrooms and Toxic Air Contaminants

California has over 80,000 portable classrooms which are used by two million students daily. In 2003 the Air Resources Board and the Department of Health Services released a report that said that these types of classrooms are likely to contain harmful levels of toxic chemicals.

Has your division been working with the Air Resources Board and the Department of Health Services on this issue? What recommendations do you have to reduce the levels of these toxic air contaminants?

4. Disability Access

The Division of the State Architect has been trying to reconcile the federal Americans with Disabilities Act with the state building code (Title 24, California Code of Regulations) and various local building codes for almost a decade. It has been said that there are 114 conflicts between the two, making it difficult for local building officials, architects, and business owners to comply in some areas.

What steps is the division taking to reconcile these two codes? When will the reconciliation be complete? How do you handle differences in the two codes when asked by local building officials, architects, or business owners?

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:KW:dc

January 23, 2006

The Honorable Don Perata
President pro Tempore
State Capitol, Room 420
Sacramento, CA 95814

Attention: Nettie Sabelhaus

Dear Senator Perata:

This letter is in response to your request for information related to the February 1, 2006, confirmation hearing on my appointment as the State Architect. Thank you for the opportunity for me to share my short and long term goals with you and address the questions that have been previously presented.

1. General

Please provide us with a brief statement of your short and long term goals. What do you hope to accomplish during your tenure as the State Architect?

My short term goals:

- Take necessary immediate steps to make improvements to better serve our constituency through aligning our resources to achieve more timely, consistent, and accurate plan reviews and approvals;
- Fill the critical vacancies in the Division of the State Architect (DSA) organization;
- Revitalize and cement our communication network with education and business community stakeholders through the DSA Advisory Board and other organizations;
- Continue to work with the Community College Chancellor's Office in developing and implementing a collaborative process;
- Launch the DSA Academy for training DSA staff, consultants, and stakeholders;
- Continue implementation of the Building Excellence Program focusing on safety and security, cost effectiveness, sustainability, and accessibility; and
- Complete the International Building Code update.

My long term goals:

- DSA offices revitalized and fully operational with contemporary management processes and procedures based on the principles of a collaborative process currently being developed;
- All DSA offices fully electronic for plan submittal, plan review, and project close out;
- DSA office locations aligned with incoming and ongoing workload;

- Resources adjusted and aligned with projected workload for plan review and construction oversight needs, including resource leveling to utilize consultants as appropriate for peaks in workload;
- The DSA Academy in place and serving the training needs of the State, counties and cities relating to State policy, codes, and regulations as they affect the built environment; and
- DSA meaningfully involved in the establishment of Statewide policy related to the built environment. This will involve collaboration and coordination between various agencies, departments, divisions, and offices involved in design and construction across the State.

2. School Construction

In the past, many individuals and organizations knowledgeable about the school construction approval process have complained about the length of time it takes to complete the review of school construction plans. A few years ago there was a six- to eight-week wait (referred to as "bin" time) before the Division of the State Architect began its review of proposed school construction projects. The process was somewhat streamlined in 1999.

What is the current bin time or the time it takes your office to review school construction plans? Does your division have enough staff, engineers in particular, for the review process? School construction can be episodic, influenced by availability of state and local bond funds. How does your division handle the unevenness of the number of school construction plans it is called upon to review?

As you are aware, our workload fluctuates based upon school construction activities. As a result, both our bin and plan review times can vary throughout the year. We process an average of 3,300 plans a year (which translates to approximately $5 billion in construction costs). Currently, our bin time (the time from the architect's submittal of plans until our professionals start the plan review process) varies between four and 10 weeks. This time frame fluctuates depending on the workload at any point in time in each of our four offices. Our current actual plan review time is averaging 29 calendar days. The average time for the firm to make required revisions and return with revised plans to obtain final plan approval is averaging 72 days.

We currently have authorization for 311 positions, which are not all filled (72 are vacant, of which 45 are engineer and architect positions). We have developed a very aggressive recruitment plan and anticipate filling our critical vacancies by mid-2006. We are continuing to analyze our workload resulting from the passage of both Propositions 47 and 55 and projecting workload from any additional school construction bonds which may be passed. We continue to contract with architectural and engineering consultant firms for additional support.

Our objective is to have an adequate and consistent staff base to handle the majority of our projected and ongoing workload. Peaks in workload would continue to be contracted to private consultants.

Are there any measures which could simplify the plan checking process while also reducing costs associated with design and construction delays, e.g. using standardized designs?

Yes. We are developing what is known as the Collaborative Process for Project Development and Review which will substantially refine our procedures toward more appropriate and efficient management practices. The Collaborative Process, developed in partnership with the Community College Chancellor's Office, will involve greater accountability on the part of our community college clients and their design professionals. It will involve DSA professionals working collaboratively with our clients and design professionals throughout the project design process to anticipate and schedule project plan reviews and to identify technical project requirements and potential issues rather than simply reviewing documents at the completion of the design professional's work. Once implemented, the new Collaborative Process should enable DSA to substantially reduce the time needed for project plan review.

Utilizing standardized designs, systems buildings, and alternative delivery systems (such as design-build and lease-lease back) can all potentially reduce cost and time in the design and construction of projects.

What is your position on the reuse and/or sharing of school plans among schools and districts? How do you view the utility of developing model or "stock" plans at the state level for use by school districts?

Reuse and/or sharing of school plans among districts, where appropriate, can save time and money both during the design and construction phases of work. The cost savings come partly from reduced professional fees, but more from the cost of construction (for example, bidding on similar designs reduces the contractor's 'risk' factor).

Developing Model or "stock" plans at a State level is a viable option for use by districts across the State. Such a program has potential if the program: 1) is managed well and respects the uniqueness of our many educational philosophies and varied communities; 2) is sensitive to the seismic, climate, and topography differences; and 3) respects the professionalism of the design professionals called upon to implement the program.

3. <u>Portable Classrooms and Toxic Air Contaminants</u>

California has over 80,000 portable classrooms which are used by two million students daily. In 2003 the Air Resources Board and the Department of Health Services released a report that said that these types of classrooms are likely to contain harmful levels of toxic chemicals.

Has your division been working with the Air Resources Board and the Department of Health Services on this issue? What recommendations do you have to reduce the levels of these toxic air contaminants?

The DSA was one of the State agencies that participated in the preparation of the Report entitled *Environmental Health Conditions and California's Portable Classrooms,* prepared by the Air Resources Board and the Department of Health Services.

As you are aware, the Report contained a variety of recommendations for schools, districts, and various State departments, some of which DSA has already implemented. As for specific standards relating to portables, DSA participated with the Office of Public School Construction (OPSC) in taking steps to improve the State portable classroom specifications for their impact on indoor air quality. For example, all adhesives used for carpet or rubber baseboard

installation must be water-based adhesives and lighting systems are designed to provide 50 foot-candles at desk level. The OPSC is developing relocatable classroom guides for schools that lease relocatables through the State Program. The guidebooks provide information that will help assure that classrooms are properly maintained.

In addition, the Schools Workgroup of the Green Action Team created by Executive Order S-20-04, led by DSA, recommended that the Collaborative for High Performance Schools (CHPS) Guidelines be used by school districts when designing new school buildings. A major component of the Guidelines deals with indoor environmental quality. In February 2006, DSA will be notifying all school districts of the selection of the CHPS Guidelines. By utilizing the CHPS criteria, school districts will be required to perform commissioning of their mechanical systems, fulfilling another Report recommendation. The DSA homepage currently contains links to the CHPS website as well as other sustainable building resources.

The Report proposes an expanded State-level design review for new buildings and major renovations, including the review and approval of elements such as ventilation system design. In the future, DSA plans on expanding our process for Mechanical/Electrical/ Plumbing plan review.

4. Disability Access

The Division of the State Architect has been trying to reconcile the federal Americans with Disabilities Act with state building code (Title 24, California Code of Regulations) and various local building codes for almost a decade. It has been said there are 114 conflicts between the two, making it difficult for local building officials, architects, and business owners to comply in some areas.

What steps is the division taking to reconcile these two codes? When will the reconciliation be complete? How do you handle differences in the two codes when asked by local building officials, architects, or business owners?

Summary response:

The process of certifying the California Building Code (CBC) with the Americans with Disabilities Act (ADA) is a very complex and lengthy process. The DSA has been working very closely with the United States Department of Justice (USDOJ) in confirming the building code revisions that are required in order for the CBC to meet the minimum requirements of the ADA. The first major step in revising the Building Code will occur in May 2006, when DSA will submit over 200 changes to the California Building Standards Commission's (CBSC) proposed revisions that the USDOJ has reviewed and approved.

The DSA estimates that the ADA certification process may not be complete until 2009 or 2010. Prior to the actual ADA certification by USDOJ, and during the course of the ADA certification process, significant changes need to be made to the CBC to align it with the minimum ADA standards.

Until ADA certification is obtained, designers and building owners have two design standards to consider. Where discrepancies occur, the requirement which indicates the higher standard

should be used. Generally, local building officials are not obligated to enforce federal ADA requirements as is indicated in a published Attorney General opinion.

Background on ADA certification:

In order to further clarify the above responses, the following provides additional history and background:

Title III of the ADA authorizes the USDOJ to certify that State laws, local building codes, or similar ordinances meet or exceed the ADA Standards for Accessible Design for new construction and alterations. One of the several advantages of having an ADA certified building code is that in any legal challenge that might be brought under the ADA to facilities constructed in compliance with a certified building code, compliance with such certified code will constitute rebuttable evidence of compliance with Title III of the ADA. Congress, by authorizing the certification of State and local accessibility requirements under Title III, recognized the important role that State and local building codes and standards may play in achieving compliance with the building-related aspects of accessibility. State and local building officials who are involved in plan approval and construction inspection processes may provide important assistance to construction and design professionals through their oversight of the accessibility requirements of a certified state code.

California Government Code Section 4459(c) indicates that the scope of accessibility regulations in the CBC shall not be less than the application and scope of accessibility requirements of the federal ADA as adopted by the USDOJ. ADA certification by USDOJ will provide the most effective, recognized, and legal method for demonstrating that the CBC meets or exceeds the ADA requirements.

The DSA submitted the currently effective 2001 CBC to USDOJ in September 2002 with a request for ADA certification that the CBC meets or exceeds the new construction and alterations requirements of the ADA. The submittal included over 350 pages of side-by-side analysis which contained proposed revisions, additions, and deletions to the CBC that were considered necessary in order to establish ADA equivalency.

In October 2004, DSA received an initial response from the USDOJ regarding DSA's September 2002 submittal. The USDOJ's October 2004 response, which is posted on the DSA website, is approximately 300 pages and addresses over 800 issues.

In May 2005, DSA responded to over 500 of those issues in a *Part 1* submittal to USDOJ.

In January 2006, USDOJ responded to DSA's *Part 1* submittal by indicating that the vast majority of items proposed by DSA were acceptable for ADA certification. As a result, DSA will propose those changes in the CBSC's next rulemaking cycle which is expected to be May 2006.

In February 2006, a DSA *Part 2* submittal to USDOJ is planned that will address the remaining items that were not included in the *Part 1* submittal. It is expected that a USDOJ response to the *Part 2* submittal will be received in time to submit proposed changes in the CBSC's next rulemaking cycle *after* the 2006 rulemaking.

The process for ADA certification is complex and will undoubtedly take time, include public participation meetings, interaction with the USDOJ, and revisions to building standards in accordance with California rulemaking law. The DSA has devoted full-time staff to interact with the USDOJ. While we are closer than we have ever been to obtaining ADA certification, a substantial amount of work still lies ahead for the CBC to be formally certified. Based on the many variables involved, it is quite difficult to predict a definite date as to when ADA certification will occur. The DSA staff has estimated that the ADA certification process may not be complete until 2009 or 2010; however, it should be pointed out that during the course of the ADA certification process, the CBC will undergo significant changes that will be aligning it with the minimum ADA standards, prior to the actual certification.

If there is any additional information that you require, please do not hesitate to contact me at (916) 445-4167.

Sincerely,

David Thorman
State Architect

cc: Richard Costigan, Legislative Secretary, Office of the Governor
Happy Chastain, Deputy Secretary–Legislation, State and Consumer Services Agency
Doug Hoffner, Assistant Director–Legislation, Department of General Services

To the Senate Rules Committee:

Preservation of Affordable Housing in California is a very important cause. There is a huge shortage of affordable housing in our state and every year the need becomes greater, because we can't produce enough housing to meet the need. It is far more efficient use of public funds to preserve the existing housing stock than it is to create brand new housing. That being said, I don't support legislation that encumbers existing owners "after the fact" whose affordability covenant are about to expire. Rather, we should be creating programs to preserve the existing affordable housing stock in order to incentivize the current owners economically so they will be motivated to either hold or sell their property with a structure that will extend the affordability covenant on these properties. My short and long-term goals on this board would be to try to provide input as to how best we can achieve this objective of preserving affordable housing.

I am honored to be recommended for this appointment. I look forward to volunteer my time to provide this important service to our state.

Sincerely,

Geoffrey G. Brown

JAN 2 [illegible]

VENTURA AFFORDABLE HOMES, INC.

128 S. California Street, Suite C, Ventura CA 93001
(805)643-8269 • fax (805)643-5823

January 24, 2006

The Honorable
Senator Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, Ca. 95814-4900

Dear Chairman Perata:

Thanks you for the opportunity to address you regarding my goals as a member of the Board of Directors of the California Housing Partnership Corporation. The Corporation's mandate, to preserve at-risk affordable housing stock, provide affordable housing services, and advocate for increased affordable housing supply throughout California, is extremely important in our high cost state.

It is difficult to divide my personal goals as a Board member into short and long range, given the complexity of the affordable housing needs of our state. However, some of my most immediate goals are:

1. Assist the appointing authorities in achieving a full complement of Board members.
2. Continue to emphasize excellent fiscal controls and financial stability.
3. Increase contacts with the financial community to expand our funding base.
4. Participate in statewide affordable housing forums, committees, task forces, and other croups addressing affordable housing issues.

In the long term, I am most interested in working with all of our Board members to maximize the use of their extensive and diverse expertise in affordable housing. There are a variety of ways that our mission can be enhanced:

1. Expand our annual meetings to a workshop to exchange innovative ideas, drawing on our diverse knowledge base.
2. Develop a regular program of appearing before the legislature, with both our Executive Dir3ector and Board members.
3. Work toward both providing leadership and achieving consensus within the affordable housing community for long-term solutions to the affordable housing shortage.
4. Work with stakeholder groups in conjunction with our staff to develop a long term affordable housing funding source.
5. Increase the visibility of the Board and the Corporation by developing an active public participation campaign for Board members as well as staff.

Although the problem of a lack of affordable housing in California is universally acknowledged, we have yet to reach consensus on solutions to our housing shortage. My overreaching goal is to participate in finding acceptable methods to provide adequate housing to Californians at all income levels, with a definite emphasis on housing that is affordable to our low and moderate-income residents.

I appreciate the extraordinary opportunity to participate in this important endeavor.

Sincerely,

Lynn L. Jacobs
President

528-R

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STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 15, 2006

1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

ALEXANDRA VUKSICH, Member
California Gambling Control Commission

SENATOR CHUCK POOCHIGIAN

JOHN GILBERT CRUZ, Member
California Gambling Control Commission

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have two appointees today from the Governor, both with the California Gambling Control Commission. Our first is John Gilbert Cruz.

SENATOR BATTIN: Mr. Chairman, if I might.

I have several questions for the nominees.

CHAIRMAN PERATA: You want to bring them up simultaneously?

SENATOR BATTIN: Yes, instead of saying it twice. It would probably be easier to do together.

CHAIRMAN PERATA: Alexa, you can come up, too.

SENATOR BATTIN: They're not individual questions.

CHAIRMAN PERATA: Why don't each of you make a little opening statement.

SENATOR BATTIN: I'll start with, "Isn't it true."

[Laughter.]

MR. CRUZ: I'll defer to you.

MS. VUKSICH: Oh, what a gentleman.

CHAIRMAN PERATA: Isn't that something. It's probably going to be the last time that's going to happen, so enjoy it.

MS. VUKSICH: Fine.

Good afternoon, Senator Perata, Members of the Committee.

My name is Alexandra Vuksich. I am the

Governor's public member appointee to the California Gambling Control Commission.

I'd like to thank you for this opportunity to appear before you to discuss my confirmation. You've all received copies of my resume, and the short and long term goals which I've identified in my short tenure at the Commission.

What you don't see on my resume, or anyone else's for that matter, is the rest of my life so far.

I believe that my professional experience in combination --

CHAIRMAN PERATA: Excuse me.

MS. VUKSICH: Certainly.

CHAIRMAN PERATA: You're here to --

SENATOR POOCHIGIAN: To introduce her.

CHAIRMAN PERATA: Why don't you go ahead. If you'd like to do it from there --

MS. VUKSICH: This is fine because I can pronounce my name, and he can't.

[Laughter.]

SENATOR POOCHIGIAN: Mr. President, Mr. Chair and Members, I'm sorry that I was a few minutes late.

It is really my great pleasure to participate in the presentation of Alexa Vuksich to you and commend her to you for confirmation.

She is someone I've known for far too long.

[Laughter.]

CHAIRMAN PERATA: Nice start.

SENATOR POOCHIGIAN: For a long, long time, and

we have worked closely together on a number of matters professionally. And professionally I can tell you, as well as personally, that you have an outstanding candidate before you. She is in several assignments of which I am quite well aware, has acquitted herself very, very well, and her principal quite well as well in the course of her endeavors.

She's thoughtful. She's attentive to detail. She gets her arms around issues and understands them. She's smart. She's collegial.

And I think she'd be very, very well suited for a job like this that requires a level of not only intellectual curiosity and study, but also discernment in judgment. I just think she has the qualities that it takes to do that.

You have her background before you. I know you've seen her bio, and I know she's going through some of that now. But I just can't say enough nice things about her.

I hope you'll vote favorably. Thank you.

CHAIRMAN PERATA: Thank you. Anything you can offer for Mr. Cruz?

[Laughter.]

SENATOR POOCHIGIAN: I had a professor in undergraduate school that was asked by one of my classmates to write a recommendation for him, and he didn't know him very well. And yet, he felt it would be helpful to him to get his recommendation.

The professor, who was himself very well known and highly esteemed, he said, "Well, I don't know you very well."

He said, "I still need a recommendation. I'm trying to get into business school, graduate school."

And he wrote a short note. He said, "Properly placed, Michael shall go far." And he handed it to him and he said, "I hope this helps."

So, I don't think it would be appropriate for me --

[Laughter.]

CHAIRMAN PERATA: That's a glowing recommendation. Thank you, Senator.

SENATOR POOCHIGIAN: Thank you very much.

CHAIRMAN PERATA: This governance is really serious business.

MS. VUKSICH: Well, I think I should stop now. It's all down hill.

CHAIRMAN PERATA: I think you're right. Let's put the burden on him.

MS. VUKSICH: A little bit more about me because it's all about me.

CHAIRMAN PERATA: You're not elected; then it would be all about you.

MS. VUKSICH: Definitely. It's only partially about me.

What you don't see on the resume, or from Senator Poochigian's comments, are a little -- a little added to mention to myself.

I was born and raised in San Francisco. I was brought up in a multi-generational bilingual household.

I am very grateful for the public education that I received in San Francisco, including a stint at City College, which most people never admit to, but I'm quite proud of.

For me, seeing and doing are my best learning tools, and I was always encouraged from my earliest years to go off and follow my curiosity, travel, and do all those fun things.

I am probably more able to say, "Been there, done that," than anyone that you can find in a Costco line. I am also probably more likely to hear a story about someone else and say, "Oh, I've got an uncle," or an aunt, or a cousin, or somebody in my family who does that, or is that, or been there, than Gracie Allen on a good day. So, I've got a lot of life experience that sort of rounds out my professional world.

What does that have to do with the Gambling Commission? Well, the Commission, this Commission, as in most other commissions, are designed with a make-up to bring different sets of experience and professional expertise to the whole body. This one in particular has room for attorneys, a CPA with audit experience, people in the business community, and people from law enforcement. And there's one public member spot, and that would be me. And I always think it's the responsibility of that public member to bring the eyes of that "normal" person out on the street.

I hope nobody back there is laughing when I say "normal," because that's not fair.

CHAIRMAN PERATA: They probably fell asleep.

[Laughter.]

MS. VUKSICH: And I would like to be that public member on this particular body.

On the topic of gambling, I think I am average. I am not opposed to gambling. I've been known to throw money into a machine, even on a roulette table once in a while.

I don't think about it in the morning when I get up, or at night before I go to sleep.

However, I am not unfamiliar with the problems of an addictive gambler in the family. In good Gracie fashion, I had an Uncle Mike who was a problem gambler and died a penniless man in my parents' guest room, because that big win was just around the corner, and it never happened. So, I understand the effects of all that.

I am keenly aware that few people in the State of California ever get to sit at this table and appear before you for an appointment like this. And it's a humbling experience, and it is with great humility that I ask you for an affirmative vote on my confirmation.

Thank you.

CHAIRMAN PERATA: Thank you.

We were almost going to put this hearing over because your accordion --

MS. VUKSICH: Who told you about the White Pearl?

CHAIRMAN PERATA: But I was persuaded that we can wait until you take your nomination up on the Floor.

MS. VUKSICH: I'm never sure of the protocol, if they'd rather hear a polka or a waltz.

CHAIRMAN PERATA: Both. And you'll have a bigger

audience then.

MS. VUKSICH: Oh, good.

CHAIRMAN PERATA: So, just keep your fingers nimble.

MS. VUKSICH: I can't be responsible if they get up and dance.

[Laughter.]

CHAIRMAN PERATA: Mr. Cruz.

MR. CRUZ: Thank you, Senator. Senator Perata and Members of the Rules Committee, good afternoon.

My name is John Cruz, and I appreciate the opportunity to appear here today to answer any questions that you may have which bear on my qualification to have the honor and privilege of serving as a Commissioner on the California Gambling Control Commission.

I believe that each you has or may have access to my biographical background, so I will not dwell on it further in the interest of time.

I have served on the Commission since the middle of April of last year. I've experienced much in that time, and I presume have yet much more to experience.

During my tenure, among other things, I have attended every scheduled Commission meeting that was open to the public, about 21 in all. I have attended various public conferences related to gambling, had countless meetings with Commission staff members and others, and made numerous site visits to acquaint myself with the gambling establishments and personnel that are subject to the Commission's jurisdiction and

oversight.

Two things are clear. First, the Commission has accomplished much in its short history. Second, the Commission has much more to accomplish.

In the area of accomplishments since last April, among other things, the Commission has taken action, that is, voted to approve or take other action, on well over 2,000 applications from individuals seeking approval of applications for a license to engage in the business of gambling or seeking employment in that field.

Each such applicant undergoes a background investigation that is reviewed by the Commission staff before it is placed on a Commission meeting agenda. I hold before you an exemplar of an agenda package which each Commissioner receives about once every two weeks.

Since last April, the Commission also promulgated regulations to provide clarity with respect to definitions, and to authorize and approve additional temporary and permanent tables in gambling establishments. More significantly, the Commission has started the process of finalizing so-called disciplinary regulations. Assuming no further significant or unanticipated delay, these regulations should be in full force and effect by July of this year. I'm proud to say that I played a significant role in helping to craft those regulations.

In closing, I have submitted to the Chairman of this Committee a brief overview of my goals for the Commission. I'm now ready to entertain your questions. Thank you again for your time and consideration.

CHAIRMAN PERATA: Thank you both.

Mr. Battin.

SENATOR BATTIN: Thank you, Mr. Chairman.

I want, as you well know because we've talked about this in advance, I want to kind of focus on the Commission and the role that you have dealing with tribal gaming, specifically your positions on what you believe the Gambling Control Commission has in terms of its scope on regulating the tribes with the various compacts that we have in place now.

For some background, for the record, the Special Distribution Fund was established in 1999 with the compacts between the 50-some-plus tribes and the Governor at the time. In the SDF, it demanded that the money that was net-win from the machines that were in operation prior to 1999, and we had the compact, those monies would then go into the Special Distribution Fund.

Later, between Senator Burton and I, we wrote the legislation that then delineated how the SDF monies would be placed out. Number one, it goes to regulatory functions. It goes to gambling control problems. Or actually, I guess number one goes to -- excuse me, number one is the backfill of the Indian Gaming Trust Fund for the nongaming tribes, then regulation, then problem gaming, and finally it goes to the local governments for mitigation against tribal gaming impacts.

So, every dollar that doesn't make it into the Special Distribution Fund in one way or the other effectively comes off the bottom line of what goes to the local governments for their impacts, since they're the last in line to receive

that money.

In the compacts in '99 -- and I'll get to my first question here. I don't want to be like Senator Biden, and ask a question longer than the answer expected.

CHAIRMAN PERATA: He's always quoting Democrats.

[Laughter.]

SENATOR BATTIN: In '99, the compacts, or the language in the compacts, says for regulatory efforts on the '99 compact signatories. It says that, I believe, in the legislation as well.

What is your view, then, of the administration's proposal in this last year in their budget to pay for the regulatory activities on tribes that do not pay into the SDF, that are compacts that were signed after the 1999 compacts, or even the ones that have been recently signed by the Governor?

MR. CRUZ: I'm not sure I follow the question specifically.

SENATOR BATTIN: I'll ask it again.

CHAIRMAN PERATA: No, no, no. Let him try.

MR. CRUZ: If what you're referring to is the process by which the budget is formulated that pays for the activities of regulating the tribes, the Commission, although it is a -- it develops -- how shall I put it -- sets policy, it really only sets policy with regard to the activities over which it regulates. Meaning that the Commission has no input, as far as I know, no input into -- in the way in which the Department of Finance suggests that our activities be funded.

And so, no one has -- no one seeks out our

opinion. No one sought out my opinion.

And it's about the only way I can express myself on that subject.

In terms of the -- whether I have an opinion, I haven't really formulated an opinion about what would be the most appropriate way to fund our activities, from which fund or pocket should the money be derived.

I know that, or at least I'm informed, that some of the money that is being suggested comes out of the SDF, and some comes out of the General Fund. But we have no real input in terms of determining the respective percentages, if you will, of our activities that are funded by which fund.

SENATOR BATTIN: That's a variation of the answer you gave me when we met.

Let me ask the clarifying question.

MR. CRUZ: Please.

SENATOR BATTIN: You as a Commission member have oversight on how the Commission employees do their job; don't you?

MR. CRUZ: Correct.

SENATOR BATTIN: In that capacity, do you think it's appropriate use of the Special Distribution Fund for people to engage in jobs to regulate tribes that do not pay into the SDF if their PY is funded out of the Special Distribution Fund, pot of money, as an administrative role that you have?

MR. CRUZ: I can reply only in that, as I understand it, the post-'99 compacts that have -- either were entered into or amended, that there's a recognition that some of

the funding -- that some of their funding is being contributed directly to the General Fund.

And we make an effort -- I don't know how scientific an effort, I don't know how accurate an effort -- but we make an effort to try to determine what -- of our activities, what are directly attributable to our oversight and conducting of our responsibilities as it relates to the tribes.

And so, that's -- I don't know how I can answer it any more direct.

SENATOR BATTIN: In your answer, you said you believe that some of the funding was coming from the General Fund. I'm assuming that you don't have another revenue source other than the General Fund, other than the SDF.

MR. CRUZ: Correct.

SENATOR BATTIN: You have fees that are collected from the card clubs.

MR. CRUZ: Right.

SENATOR BATTIN: Do you spend any of the money that you collect from the card clubs on regulating tribal gaming anywhere?

MR. CRUZ: Not to my knowledge, no.

SENATOR BATTIN: So, why is there a distinction between that, because card clubs aren't Indian casinos, and the tribes that pay into the SDF aren't the later tribes that don't pay into the SDF. Why is it okay then to spend the '99 tribes' money that they pay into the SDF regulation for tribes that don't, when it's not okay to spend the card clubs' money on Indian gaming regulation? What's the distinction?

MR. CRUZ: I don't have a distinction.

SENATOR BATTIN: Then why is the Commission doing that?

MR. CRUZ: I couldn't answer that question directly. Couldn't answer it at this time, put it that way.

SENATOR BATTIN: Ms. Vuksich?

MS. VUKSICH: I'm not sure why the Commission is doing that.

I can see, you know, the Department of Finance and the Governor's Office proposes the budget. And their tools in doing that are very different from what I may have knowledge of.

I have noticed that on this year's budget there has been an effort to separate out some of those activities, the audit activities and the compliance activities, between the SDF contributing tribes and the new and amended compact tribes.

I don't -- I don't know what the plans are vis-a-vis how to set up silos, if there's any plan to do that at all, and create a firewall. I think what you're asking is why there's not a firewall between the '99 compacts and the new ones.

SENATOR BATTIN: Well, I am, also because there are different terms of agreement and types of regulation that you engage in.

MS. VUKSICH: Right.

SENATOR BATTIN: The newer compacted tribes have agreed to different things than the '99 compacted tribes did.

MS. VUKSICH: Right.

SENATOR BATTIN: So, it just doesn't stand to reason to me that you would allow money, which the SDF tribes paid for, to regulate activities for the newer compacted tribes.

MS. VUKSICH: Sir, I'd have to go back and look at the compact language.

SENATOR BATTIN: Let me once again say why I'm concerned.

It's real clear to me that every dollar that we spend out of the Special Distribution Fund on anything else but local mitigation, the take comes right out of my county's and other counties' ability to get money from the SDF. A dollar that we spend on regulation for a tribe that doesn't pay into the SDF is a dollar that Riverside County doesn't get to buy a police cruiser, or a position in the District Attorney's office, or an ambulance, or a fire truck, which is all the things that they have spent the money on with the SDF.

So, that's the reason that I have been so insistent about this, is because it comes right off the bottom line of the impacts that are supposed to be mitigated by these tribes.

And it doesn't make any sense to me whatsoever that we are just -- I guess the only common denominator is that they're Indians. So, if you think that just because they're Indians means that they're all the same, it's wrong. And that they have the same agreements with the state, that's wrong. They don't. They have very specific contracts with the state that were entered into, a government-to-government relationship.

And the money that one tribe is putting into as part of their agreement is not going in the way it was ever intended, either from the compacts, the ratification of the compacts, which I authored, or the way the SDF money is spent, which I authored. It's not consistent.

And it has been big frustration of mine for the last year that we have had this ongoing battle.

Do you have any comments on that?

MR. CRUZ: We did discuss this previously. It was only when we discussed it that it was really brought to my attention.

I promised you then, and I'll promise you now that if and to the extent that we have some ability to control those issues that you're identifying, that I will make it my personal business to try to do so.

But I was handed basically a fait accompli when we saw the budget. So, I really don't know how else to respond to you at the moment, other than to say that I am put on notice that it is an issue that the Senator holds dear.

I agree that all politics is local, and that as much money as we can push down to local level, we should. And so, I don't know how else I can -- what else I could say at the moment.

SENATOR BATTIN: And you agree with me, as you said earlier, that as commissioner you have oversight on how the employees spend their time in the activities that they engage in?

MR. CRUZ: In a manner of speaking. We don't

directly supervise. By that I mean, I don't give day-to-day assignments to employees.

SENATOR BATTIN: You have a director for that.

MR. CRUZ: Yes, we do.

SENATOR BATTIN: And you decide whether he's your director or not.

MR. CRUZ: Correct.

SENATOR BATTIN: Ms. Vuksich, do you want to expound on that as well?

MS. VUKSICH: To the extent that the Commission was born at a time in '99 when those original compacts were made, and you had a very particular way of determining how the activities of the state, vis-a-vis the regulation, would be funded. Then you had a new governor with a new set of compacts. I could see a future governor with yet a third way of doing things.

So, it's probably a good time to perhaps sit down with the Department of Finance and figure out how they envision maintaining consistency and predictability with the signatories on the compacts.

SENATOR BATTIN: Let me just ask you some brief questions and I'll be done.

CHAIRMAN PERATA: Before you do, we'll make this bipartisan.

This is an issue that concerns me as well. If maybe we could get back to you, and you could give us a little status report, or you'd like to call us, but it is a major concern for us.

MR. CRUZ: I understand.

CHAIRMAN PERATA: Thank you.

SENATOR BATTIN: Do you agree, then, that there is a distinction between the monies that are paid in by the tribes that pay into the SDF for the regulation of their activities versus the tribes that do not pay into the SDF?

MR. CRUZ: I don't think the Government Code makes a distinction between those that do and those that don't. I think the Government Code just provides in part that monies from the SDF shall be used to pay for the activities of regulating tribal-state compacts.

There may be -- there may have to be some clarification.

SENATOR BATTIN: So, do you think it's appropriate that money is currently being spent out of the SDF for the negotiation and regulation of other tribal-state compacts in regard to the tribes that do not pay into, or from the tribes that do pay into the SDF?

MR. CRUZ: Well, the tribes that do not pay into the SDF pay into the General Fund. And part of our activities are funded by the General Fund in recognition, I believe, of that fact.

We may be talking about allocation issues or cost accounting issues in terms of trying to make the process or the amounts that are paid more fair and equitable.

SENATOR BATTIN: Would you like to answer that as well?

MS. VUKSICH: I've been there five weeks, and I

don't know enough about how each individual set of activities is funded to be able to properly --

SENATOR BATTIN: That's fair enough.

MS. VUKSICH: -- form an opinion.

SENATOR BATTIN: Do you think that it is appropriate? Do you personally think that it is appropriate for the newer compacted tribes to have their regulatory actions paid for by the tribes that pay into the Special Distribution Fund?

MR. CRUZ: As a general proposition, no, I do not think it's fair.

MS. VUKSICH: I would probably have to have a conversation with the tribes to see what their expectation was.

SENATOR BATTIN: Okay.

That's all the questions I have. Thank you very much. I appreciate it.

MR. CRUZ: Thank you, Senator.

CHAIRMAN PERATA: Mr. Cedillo?

SENATOR CEDILLO: No questions.

CHAIRMAN PERATA: Anybody here in support or opposition? Wonderful.

SENATOR BATTIN: What I would appreciate, because this was kind of a long conversation that we had, would be if you could send me in writing, and to the Chairman of the Committee as well in writing, what your positions are regarding spending Special Distribution Fund monies on other activities than regulation of the tribes that pay into the fund. I would appreciate that. And the sooner you can do it, the better.

I'm going to ask the Chairman not to set the

nominations on the Floor until I hear back from you.

MR. CRUZ: Fair enough.

MS. VUKSICH: Okay.

SENATOR CEDILLO: You might also be interested in should there be a need for code clarification. He had indicated that the code is not specific in making the distinction.

SENATOR BATTIN: I'm not entirely sure that that is the case. I believe that the language in the compacts are pretty clear, and the language in the ratification, but I'll look at that. If that is true, then I will follow up in writing to you.

SENATOR CEDILLO: But the question is their interpretation of it.

You indicated that you thought the code didn't give you direction for making those distinctions.

SENATOR BATTIN: Fair enough.

MR. CRUZ: That's a fair characterization.

SENATOR BATTIN: I would appreciate it if you would look at it and then respond in that way as well.

MR. CRUZ: Okay.

SENATOR BATTIN: Thank you.

CHAIRMAN PERATA: Mr. Cruz, I noticed in your responses to us in writing that you had something called a self-exclusion protocol.

MR. CRUZ: Yes, Senator.

CHAIRMAN PERATA: Explain that.

MR. CRUZ: As part of the problem, recognizing that there's problem gambling out there, gambling addiction, the

Commission is working with the Office of Problem Gambling to try to develop regulations by which we will address the concerns adequately of notifying the public about places to -- and people to call if there's a problem.

One of those issues deals with the self-exclusion list. And that is when someone recognizes they have a problem with gambling, that they can voluntarily put their names on a list, and that gambling establishments from that point forward will not permit them entry into the premises. It's a purely voluntary program.

Probably not the perfect panacea, but for those -- for some it may actually prevent them from reentering a casino and adding to whatever woes they may be committing out there.

So, that's what the self-exclusion list is. It's part of what is being contemplated by our regulations.

There's also a self-restricting list which would prevent people potentially from being issued credit by casinos if they put themselves on this list. I see it potentially as being a tool for the judiciary, particularly in family court, to use in situations where problem gambling is tearing families apart, or as part of a settlement with the court, settlement terms with the court, that someone will voluntarily put their names on that list.

There are issues dealing with privacy, with questions of whether we can have a statewide self-exclusion list, or whether it has to be limited to simply one of the clubs, that sort of thing.

So, those are issues which we have to ferret out, and we'll be having -- during Problem Gambling Week, Problem Gambling Awareness Week, which is March 6th, we intend to put on our agenda the very first hearing on our regulations dealing with this issue.

So, that's what that self-exclusion list is about.

CHAIRMAN PERATA: Interesting. How do I get off the list?

MR. CRUZ: Well --

CHAIRMAN PERATA: Hotel California?

[Laughter.]

MR. CRUZ: I suppose.

I gather there should be, to make it effective, hopefully there'll be some sort of protocol from the perspective of timing so that someone can't just simply walk up and say, "Take me off the list. I want in right now." That there'll be some sort of notice procedure so that someone will have a chance to cool off before they're allowed to come in.

CHAIRMAN PERATA: The other question I wanted to ask is, the Attorney General has said that there are 4176 key tribal employees who are supervisors or managers in tribal casinos and require background checks. Apparently there are 700-some-odd cases where they've actually done those.

What's the status? Either one or both of you.

MS. VUKSICH: We do have a backlog of tribal licenses waiting. Some of them are renewables; some are initiating licenses. And we do have personnel who are taking in

a little overtime to get that backlog taken care of.

CHAIRMAN PERATA: I saw the movie "Casino" where, you know, you put yourself at the bottom of the list with a different title, and 20 years later --

MR. CRUZ: If I may add, Senator, all of those folks are working. The fact that they're a backlog, part of our backlog, is not preventing them from working. At the moment they've all been theoretically investigated by the Tribal Gaming Association. So, we're not -- the fact that there's a backlog is not hampering them from working.

We anticipate that the backlog should be worked through in about three months, based on current workload assignments.

SENATOR BATTIN: I have another question. This is about the SDF, but it's not about regulatory actions.

Is Dan Kolkey a contractor or an employee of the Gambling Control Commission? Does he come through any line item on your budget?

MR. CRUZ: I couldn't answer because I don't know, to be honest. I know that -- well, that's as direct as I can be. I don't know, to be honest.

SENATOR BATTIN: You don't know either?

MS. VUKSICH: I don't know either.

SENATOR BATTIN: It's my understanding that he has been paid directly out of the SDF to negotiate the new compacts. It just makes absolutely no sense to me whatsoever, because the tribes that have the compacts that are paying into the SDF are paying for the negotiations for the new compacts

that don't pay a dime into the SDF.

Would you, as part of your correspondence back to me, would you check? I'm just trying to track down exactly how he's getting paid out of the Special Distribution Fund.

MR. CRUZ: Absolutely.

SENATOR BATTIN: Frankly, I'm trying to determine exactly what authority there is to do that, and if indeed he is being paid.

I've been told. I haven't seen. And I'd like to know, to have clarification on that.

Thank you.

MR. CRUZ: We'll check on that.

SENATOR ASHBURN: Let me just follow up on that question, not related to that particular individual, but on contracts of the nature that would involve a person being retained.

Is that a decision that would be made by the commissioners, or does the authority to authorize a contract like that reside with your executive officer?

MR. CRUZ: I would think that any authority that the executive officer has would be derived through the Commission in any event, even if it's sort of standing authority.

SENATOR ASHBURN: Is it conceivable that a contract could be entered into by the staff without the Commission's authority, without the Commission's approval?

CHAIRMAN PERATA: Probably has a limit. Most executives have a ceiling.

SENATOR ASHBURN: I guess all I'm asking is that you take a look at that.

MR. CRUZ: Will do, Senator.

CHAIRMAN PERATA: We have a motion from Senator Battin, just to show there's no hard feelings.

[Laughter.]

SENATOR BATTIN: I'm fine with that.

CHAIRMAN PERATA: I just wanted, Alexa, to say that we appreciate the work that you did at the time you were serving the Governor's Office. You had a very important position, and your professionalism and integrity was noted by many, probably all.

And you're another example -- I see Pat's here. We had her last week -- of who know no limit in sacrificing their time to serve the public. I just personally on behalf of the Senate want to thank you for that work.

MS. VUKSICH: Thank you.

CHAIRMAN PERATA: I wish you well, and I hope you even enjoy this as much or more.

You don't want to get sideways with Battin because he'll make you write a term paper.

[Laughter.]

MS. VUKSICH: I'm going to have to memorize all the codes now.

CHAIRMAN PERATA: Yes.

But that is an issue that a lot of us have been sensitive to. We really depend upon you to sort it out --

MS. VUKSICH: I understand.

CHAIRMAN PERATA: -- and particularly someone who both went to Michigan Law and someone who's a public member and went to San Francisco State.

Did they know that before they hired you downstairs?

MS. VUKSICH: No. No idea.

CHAIRMAN PERATA: You said you clerked with S.I. Hayakawa; right?

MS. VUKSICH: He taught social studies.

CHAIRMAN PERATA: Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations to both of you.

MS. VUKSICH: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:10 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of February, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

JOHN G. CRUZ
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January 31, 2006

VIA FACSIMILE

The Honorable Don Perata
Chair, Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814

Re: Information Requested For Confirmation Hearing.

Dear Senator Perata:

This is in response to your letter dated January 17, 2006, wherein you requested that I provide a statement outlining my short and long term goals for the California Gambling Control Commission ("Commission"), and an update to Form 700, Statement of Economic Interest. Please note that for discussion purposes, I consider the calendar year 2006 to be the short term and the remainder of my term as Commissioner (i.e., 2007 and 2008) to be the long term.

An extremely important short term goal is for the Commission to promulgate regulations, the gist of which is to provide adequate notice to the public of the procedures and penalties available to the Commission to enforce violations of law and other regulations dealing with matters under the Commission's jurisdiction. Based on information that I have been given by members of the Division of Gambling Control at the California Department of Justice ("Division"), when these so-called "disciplinary" regulations are in place, I envision that the Commission will then hold hearings or take other action in response to "accusations" filed by the Division against licensees. Depending on the number and complexity of such accusations, when the disciplinary regulations are effective, the Commission may have an immediate and considerable upswing in the amount of work tasked to it. I am pleased to say that I am one of two commissioners tasked by Chairman Dean Shelton to work with staff on this issue.

Another short term goal is to work on the effectiveness of the casino self-exclusion protocol available to members of the general public who are or may be addicted to gambling. As an attorney, I plan to work with local bar associations to educate the judiciary, specifically, family law judges, that the self-exclusion lists may be used as a tool to treat and rehabilitate addicted gamblers. In the family law context, this may be an extremely cost-effective way of dealing with those whose addiction is a source

of family trauma and breakup. I am also interested in pursuing the notion that there be a single statewide self-exclusion list which is available to all gambling establishments. Otherwise, an addicted gambler may be able to circumvent the intent of the self-exclusion list by frequenting a gambling establishment other than that from which he/she is voluntarily excluded.

It is important that the Commission make other government agencies, particularly law enforcement, aware of the duties and responsibilities of both the Commission and Division so that each may be notified when licensees are accused of or thought to be involved with committing egregious acts of dishonesty or moral turpitude, whether or not in connection with the operation of a gambling establishment. The Commission and the Division could be a useful investigative tool in crimes of this nature since the cooperation or lack thereof with law enforcement by a licensee can be a factor to be considered by the Commission as part of the licensing (renewal) process.

An ancillary and long term goal is to have the Commission be in a position to ensure the general public that gambling is conducted honestly, particularly electronic gambling, e.g., slot machines. It should be noted that the Commission does not have the tools or expertise to do so insofar as electronic gambling is concerned. This is a complex issue that involves application of the Indian Gaming Agreements between the State of California and various independent sovereign tribes. To that end, among other things, I would urge the Commission to work with the tribes, machine manufacturers and distributors to jointly develop a reasonable and unobtrusive protocol through which that goal may be accomplished. If successful, both the State of California and the industry may tout the results of such an effort, which would be a win-win result.

As for an update to Form 700, Statement of Economic Interest, please note that the only changes necessary would be on that portion of Schedule A-2, designated as "4. Investments and Interests in Real Property Held By The Business Entity Or Trust." The leasehold interest described in Schedule A-2 has expired and is no longer in effect. Instead, the business entity has a month-to-month tenancy.

The Honorable Don Perata
Chair, Senate Rules Committee
January 31, 2006
Page 3

In closing, I want to thank the Senate Rules Committee for its consideration of my appointment and the foregoing. I look forward to having an opportunity to address your questions at the hearing on my confirmation. Until then, please feel free to request any additional information that would assist in your deliberations.

Sincerely,

John G. Cruz

JGC/

Cc: Original via delivery to:
Nettie Sabelhaus,
Rules Committee Appointments Director

Alexandra Vuksich
California Gambling Control Commission
Short and Long Term Goals

Short Term

- *Maintain the Commission's focus on mastering the "basics" as outlined in its proposed mission statement: "...protecting the public by ensuring the integrity of gaming through setting policies, promulgating regulations, licensing, and monitoring compliance; and by implementing and administering the Gambling Control Act and the Tribal-State Gaming Compacts."*

- *Continue to develop and enhance a culture of cooperation and communication with card rooms, third party proposition players and tribes through building strong relationships with the Commission -- it's staff and commissioners.*

- *Take an active interest in the issues surrounding problem gambling with an eye towards helping to build a state program which provides coordinated and comprehensive assistance to those in need as well as the families and communities affected by their behavior.*

Long Term

- *Establish the Commission as a fair and transparent organization that protects the interests of the people of the State of California, including those who have chosen to own and operate the gaming businesses regulated by the Commission.*

- *Maintain the constant flow of information between the Commission, tribal representatives, the cardroom industry, problem gambling organizations and all other interested parties as well as with the Legislature and the Office of the Governor. Communication is the key to building those relationships and a reputation of fairness.*

- *Ensure the integrity of gaming in California*

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 22, 2005

Patrick Adams
3560 First Avenue, Unit 7
San Diego, CA 92103

Dear Mr. Adams:

As you know, your appointment to the Fair Employment and Housing Commission (FEHC) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by January 20, 2006.

Position Description

FEHC is responsible for enforcing state civil rights laws such as civil hate crimes and discrimination in employment, housing, and public accommodations. The commission also enforces state laws providing family and medical leave. The main role of the commissioners is a quasi-judicial one of reviewing proposed administrative decisions made by FEHC administrative law judges. The commission can adopt the proposed administrative decision, adopt the decision but reduce the monetary award, or reject the decision and allow for further argument before the commission, resulting in the commission issuing its own decision.

Other work of FEHC includes setting policy, such as sponsoring legislation and approving regulations. The commission also undertakes some public education activities such as holding public hearings on specific civil rights matters.

Questions:

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of FEHC?*

2. *Please describe your expertise and/or experience in the discrimination categories protected by the Fair Employment and Housing Act (race, religious creed, color, national origin, ancestry, sex, marital status, familial status, physical and mental disability, medical condition, age, and sexual orientation) and how that background will help you to fulfill FEHC's mission and responsibilities.*

3. *Please describe your expertise and/or experience in the civil rights laws protected by FEHC (civil hate crimes, employment discrimination, housing discrimination, public accommodation discrimination, and family and medical leave) and how that background will help you to fulfill FEHC's mission and responsibilities.*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,

DON PERATA

DP:KS:dc

Patrick R. Adams

3560 First (1st) Avenue, Unit #7
San Diego, CA 92103
619.255.2634

January 20, 2006

Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420
State Capital
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Please see below my responses to questions sent by Senator Don Perata regarding confirmation on the Fair Employment & Housing Commission.

1. **Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the FEHC?**

   I have reached a point in my life and career where I wish to serve my community by providing my assistance to a needed public service. Serving the FEHC is squarely suited for me from both a background and professional stand point. My first grade class in Alabama was the first in my hometown where African-American and white kids started school together - I have seen discrimination from an early age.

   I too have also felt discrimination in my own life. Being a business professional involved in the recruitment and career development of our firm's employees, I have also seen where discrimination can also take place today in California. Given my background, personal experiences, and professional capacity, my goal is to support the mission of the Commission in a balanced, fair, and effective way – to help ensure that all people of California are free from unlawful discrimination in employment, housing, and other areas of the Fair Employment and Housing Act.

2. **Please describe your expertise and/or experience in the discrimination categories protected by the Fair Employment and Housing Act and how that background will help you to fulfill the FEHC's mission and responsibilities?**

   As stated in the above question and more specifically from my background growing up in Alabama, I have seen the harm done to people due particularly, but not only, to race but also religious creed, color and ancestry. I personally have seen discrimination on the basis of marital status, familial status, and age. Professionally I work for a global, Information Technology firm based here in California. In my role as Chief Operating Officer, I have dealt fairly & legally with issues of national origin, sexual orientation, and disabilities. Taken collectively, I believe these experiences will help me further the mission of the Commission.

3. **Please describe your expertise and/or experience in the civil rights laws protected by the FEHC and how that background will help you to fulfill the FEHC's mission and responsibilities?**

   Since joining the Commission nearly a year ago, I have diligently studied California's civil rights laws but will be frank in stating that I am by no means an expert on the subject. But as a professional employer, I have practiced the application of California's employment civil rights laws every day. I am also quite familiar with the legislation process surrounding civil rights at both the state and federal level due to past experience as a former member of the Human

Rights Campaign and California Equality. This experience has helped and will continue to help FEHC accomplish its mission.

If you have further questions or comments, please feel free to reach my by email at patadamsca@yahoo.com or by mobile phone at 323.363.6353

Sincerely,

Patrick Adams

AIR EMPLOYMENT & HOUSING COMMISSION
55 GOLDEN GATE AVENUE, SUITE 10600
AN FRANCISCO, CA 94102-3660
EL: (415) 557-2325 FAX: (415) 557-0855

January 12, 2006

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento CA 95814-4900

JAN 18 REC'D

Re: Response to Senate Rules Committee 12/22/05 Questions

Dear Ms. Sabelhaus:

Pursuant to Senator Don Perata's December 22, 2005 request, I am pleased to submit answers to his questions, on behalf of the Senate Rules Committee, regarding my appointment to the Fair Employment and Housing Commission.

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the FEHC?

- As a Commissioner, I am committed to representing the Commission and advocating for a stronger presence to help educate the public and employers alike on the role of the Fair Employment and Housing Commission.

- I am committed to helping the Commission improve its current regulations, as well as developing sensible and more effective regulations that promote and protect the civil rights of Californians, in the work place and in housing, against discrimination, sexual harassment and hate violence. I am also committed to improving upon the process and mechanisms to ensure that the mandates of the Fair Employment and Housing Act are met and enforced.

2. Please describe your expertise and/or experience in the discrimination categories protected by the Fair Employment and Housing Act (race, religious creed, color, national origin, ancestry, sex, marital status, familial status, physical and mental disability, medical condition, age, and sexual orientation) and how that background will help you to fulfill FEHC's mission and responsibilities.

- Since July 19, 2004, I have served as a Loan Officer for the Department of Housing and Community Development, providing funding for housing for low-income, homeless and special needs Californians. This work has given me a passion for housing issues and provided me with an understanding of the difficulty of securing funding for such projects and the great need for more of this type of housing. The work has made me particularly concerned about the fair housing rights of low income individuals. My employment has also provided me with first hand experiences, as a Chinese American immigrant employee, with the challenges that can occur in a diverse workforce working for the state to insure a work environment that respects all employees' rights.

- I am now serving a third term as President of the Organization of Chinese Americans, Inc., Greater Sacramento Chapter (OCA) and have been a member since 1998. OCA is a national organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans (APAs). OCA advocates social justice, equal opportunity and fair treatment for APAs and all Americans. OCA monitors legislation and policy issues affecting APAs. Through my work with OCA, I have worked on civil rights issues that affect APAs as well as other Californians.

- From 1987 to 1997, I was a member of California Women for Agriculture (CWA), working on issues affecting California agriculture. CWA is a statewide organization with a mission to educate California women in agriculture and to promote agriculture in California. CWA's basic role is to help its members develop the knowledge and skills necessary to convey the mutual benefits of a vibrant agricultural economy and healthy rural communities to those who are in positions to impact the future of agriculture in California.

3. Please describe your expertise and/or experience in the civil rights laws protected by FEHC (civil hate crimes, employment discrimination, housing discrimination, public accommodation discrimination, and family and medical leave) and how that background will help you to fulfill FEHC's mission and responsibilities.

- I have developed a familiarity with fair employment laws through my involvement with the Organization of Chinese Americans and with the California Women for Agriculture. I have also developed a familiarity with fair housing laws through my employment as a Loan Officer for the state Department of Housing and Community Development. Since my term began as a FEHC Commissioner, I have volunteered to work on the FEHC's subcommittee on regulations; working on the Commission's proposed regulations on harassment training for supervisors. This work has deepened my understanding on the FEHA's provisions covering sexual harassment.

I am pleased to have been appointed to the Fair Employment and Housing Commission by Governor Arnold Schwarzenegger, and would be honored to have the Senate confirm my appointment.

Sincerely,

Linda Ng
Commissioner

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY ARNOLD SCHWARZENEGGER, Governor

FAIR EMPLOYMENT & HOUSING COMMISSION
455 GOLDEN GATE AVENUE, SUITE 10600
SAN FRANCISCO, CA 94102-3660
TEL: (415) 557-2325 FAX: (415) 557-0855

January 24, 2006

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814-4900

RE: Answers to Senate Rules Questionnaire, 12/22/2005

Dear Ms. Sabelhaus:

Per Senator Perata's request dated December 22, 2005, listed below are my answers to his questions regarding my appointment to the Fair Employment and Housing Commission:

1.) **Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of FEHC?**

As a public relations professional, one of my main goals will be to establish a greater awareness of the Fair Employment and Housing Act in our state.

Instead of proceeding with costly litigation to resolve civil rights disputes in the key areas of employment and housing, Californians should be aware of the option of bringing their disputes before an administrative law judge. Californians need to be educated on the many tools their state government offers them.

As a Commissioner of Latino descent and a small business owner, it's critical to protect and promote the civil rights of all Californians. Therefore, I'm committed to assisting the Commission in developing and implementing its regulations and making them known statewide.

2.) **Please describe your expertise and/or experience in the discrimination categories protected by the Fair Employment and Housing ACT and how that background will help you to fulfill FEHC's mission and responsibilities.**

With over 15 years of experience in public affairs and public relations, I've worked with numerous clients that represent "under-served" Californians. Through my extensive work in this field, I've become acutely aware of the many challenges our diverse population in California faces – it's critical that we educate all Californians regarding their rights.

- I reported directly to Cardinal Roger Mahony during the divisive Proposition 187 campaign and served as his official spokesperson against this initiative to Spanish-language media.

- Directed the advocacy programs for one of Los Angeles County's largest nonprofit healthcare facilities, St. Francis Medical Center in Lynwood, ensuring that the indigent population is not over-looked or forgotten.

- Worked with the California Empowerment Council, a non-profit organization, formed to promote the social welfare of Latinos in California by encouraging and educating them and other ethnic individuals to participate in the American political system.

- As a member of the National Association of Women Business Owners- Orange County Chapter (NAWBO-OC) and past Pubic Policy Director for the organization, I've learned how much work is needed in the area of educating employers to ensure that the rights' of their employees are not unknowingly violated.

3. **Please describe your expertise and/or experience in the civil rights laws protected by FEHC (civil hate crimes, employment discrimination, housing discrimination, public accommodation discrimination, and family and medical leave) and how that background will help you to fulfill FEHC's mission and responsibilities.**

   Due to my leadership involvement in NAWBO-OC, I've acquired a fair-amount of knowledge regarding fair employment laws. And as a licensed Real Estate Agent and having worked extensively on advocacy issues on behalf of Realtors, I've acquired knowledge of fair housing laws in the state of California.

I am pleased to have been appointed to the Fair Employment and Housing Commission by Governor Arnold Schwarzenegger, and would be honored to have the Senate confirm my appointment.

Thank you for your thoughtful consideration.

Sincerely,

Brenda St. Hilaire
Commissioner

Received 02-01-2006 03:30pm From-9492612515 To-SENATE RULES COMMITE Page 001

January 30, 2006
Senate Rules Committee
Attention: Chairman Don Perata

Mr. Chairman,

Thank you for considering my nomination to the Alcoholic Beverage Control Appeals Board. Over the past year I have enjoyed serving the citizens of California in this position. I initially began in February 2005 as a Member and then in July of 2005 was elected Chairman by my peers.

I feel that I am uniquely qualified for this position as I have life experiences that assist me in understanding the many facets of this position and the associated responsibility. I have been a businessman all my adult life and as a result understand what a huge undertaking it is to run a business. In 1999 I became a reserve Deputy Sheriff here in Orange County California, and have an understanding of the job from the law enforcement perspective. In addition, I have served in government and have a picture of the bureaucratic process from the agency's side of the fence.

What I have done to date within my role on the Appeals Board, is to take all the above mentioned experiences and apply them to the decisions that I have rendered on the board. I feel that this commonsensical approach is core to my effectiveness as a Member and Chairman of the Appeals Board.

Thanks again for your consideration, and I will be happy to answer any questions that you may have.

Sincerely,

Fred Armendariz

FEB 02

FROM :HORIZON GROUP FAX NO. :9492612515 Feb. 01 2006 04:34PM P1/4

RECEIVED
FEB 24 2006

February 13, 2006

Chairman Don Perata
Senate Rules Committee
State Capital, Room 420
Sacramento, California 95814

Dear Mr. Chairman,

I am receipt of your letter requesting my perspective on several important areas of interest regarding the Alcoholic Beverage Control and the role of the Appeals Board. I am happy to give you my thoughts on these matters and look forward to answering any follow up questions you may have.

Function of the Board

1) The issue that I feel is most pressing is an ongoing concern. I see the role of the board as a leveling instrument between the public, law enforcement, business and the government. The Board needs to ensure that none of the above is left out of the decision making process and that all interest are protected. The board members and I need to fully understand each case on an individual basis and make determinations based on clear and concise information. Having an unbiased and unobstructed view of each case is the single biggest hurdle that the board faces on a day to day basis.
2) I bring several perspectives to the board that helps me understand the issues from multi fronts. First, I have been a businessman for 20 years and know what it is like to keep a business in operation. Second, I have been a Reserve Deputy Sheriff for the past 7 years and understand the law enforcement perspective. Third, I have worked in government and understand the governmental responsibility, and process that go with the implementation of public policy.
3) Governors Budget: I would like to see a greater participation and interaction with local law enforcement agencies in field operations. This would allow the State to leverage it's recourses and thus build a broader profile for the execution of it's policy initiatives.
4) Binge and Under-Age drinking: Being a parent of three children I have many fears and worries regarding these two issues. However, I must remind myself that I am here to implement the law and not make law. However, I consider binge and underage drinking a major social concern.
5) I take no opinion one way or the other regarding the classification of malt beverages as it could taint my ability to fair and impartial.
6) I take no position for the above stated reasons.
7) There are no perfect laws and I am sure that we could always find ways to improve our policing of our public policy. However, I try to keep impartial and not advocate for a specific cause and simply consider the facts and the law as it is at the time of a particular hearing.

Thank you for allowing me the opportunity of addressing some of your questions. As noted I am always available to you and the Committee for any additional follow up questions or clarification that you may require.

Sincerely,

Fred Armendariz

Tina H. Frank
2102 Baker Street
San Francisco, CA 94115

January 27, 2006

Senator Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814
Via Fax

Dear Senator Perata.

In response to your letter of January 20, 2006 regarding my confirmation hearing as a member of the Alcoholic Beverage Control Appeals Board on Wednesday, February 8, 2006 I want to submit the following information that you have requested in advance of the hearing.

Statement of my long and short-term goals for the board in coming years:

As a member of the Alcoholic Beverage Control Appeals Board it is my duty to uphold the law and ensure fair and equitable treatment to all people of the state of California. I am committed to giving whatever time is necessary to make sure justice and fair play is accorded to every citizen within our jurisdiction who comes before the Board.

The Board should act in a respectful and dignified manner before those people who have taken the time to stand before us. The issues presented are critical to the appellants and often determine the future of their ability to do business in this state.

I have attached an updated Form 700. I will plan to appear before the Senate Rules Committee on Wednesday, February 8, 2006 in Sacramento.

Sincerely,

Tina H. Frank

Tina H. Frank
415-346-0611

Tina Frank
2102 Baker Street
San Francisco, CA 94115

February 8, 2006

Senator Don Perata
Chairman
Senate Rules Committee
Via Fax

Dear Senator Perata,

I am sorry that I will not be available to appear before your committee on February 15, 2006. I understand that I am not required to appear.

The questions you have asked me to answer follow.

Function of the Board

1. What do you perceive to be the biggest issue confronting the Appeals Board in the near future? How will you go about addressing this issue?

I believe the biggest issue is an ongoing one of insuring that the Department of Alcoholic Beverage Control does not abuse the powers of its office and is mindful of the laws as enacted. This must be balanced against facts that are presented and proven in cases coming before the Board.

To address the above issue I must take the time to understand the law, listen to the facts of each case and weigh that against the views of the staff as presented to us in our summaries. I must keep an unbiased and open mind while listening carefully to both sides of the argument.

2. What experience and expertise do you bring that will be of value to the Appeals Board?

Having both run and owned a small business and worked with business during my time as Bay Area Regional Director of the Trade and Commerce Agency, I believe I bring a depth of experience and logic to each case that comes before the Board. It is essential to be committed to the welfare, protection and equal treatment of all citizens of this state.

Governor's 2006-07 Budget

3. What goals or objectives for the department do you hope to see accomplished with these new resources?

With so many stories appearing in newspapers and on television about the increasing use of alcohol and abuses of over consumption, it is my hope that these resources be used to educate and shift the attitude of all citizens about the legal use of alcoholic beverages. This effort must take place in all communities across the state, emphasizing the importance of the lawful distribution, sales and consumption of alcoholic beverages.

Binge and Under-Age Drinking

4. Do you have any ideas about how to strengthen enforcement laws to prevent binge drinking by both underage and of-age individuals?

After sitting on the Appeals Board for 6 months I have listened to several cases involving over consumption of alcohol but none involving the issue of binge drinking. We see many cases involving minor decoys and this is one way the department prevents and discourages sales of alcohol to under-age individuals. As a member of the Board I do not have enough experience with law enforcement to know if increasing the penalties for offenders would solve the problem. Binge drinking is a dangerous problem that needs to be addressed by those who are knowledgeable about this issue.

5. What is your personal position on flavored malt beverages? Do you believe their current classification as beer should be changed to distilled spirits?

I do not feel that I have a depth of knowledge on this subject to give an opinion on this specific issue. How this classification is decided will affect the type of license an owner will need to obtain if they wish to sell a flavored malt beverage. As these cases come before the Appeals Board we will be observant of the law and respectful of any change in classification.

6. Do you have a position on the sale of gelatin based alcoholic beverages, also known as "jello shots?"

Again, this is an area where I do not feel I have the knowledge or experience to take a position. Logically I feel gelatin based alcoholic beverages could be tempting to minors but I have no actual research or data to back up my opinion.

7. Does current law do an adequate job of discouraging minors from attempting to purchase alcohol? Is current law strict enough with respect to retailers who sell alcohol to minors?

This is really a question for law enforcement and our legislators. I do not have the factual detail to make any kind of determination on this subject. We see many cases come before the Appeals Board involving minor decoys and sales of beer and alcoholic beverages to minors. We listen carefully to both sides of the argument and make a decision that we believe is fair and equitable to both parties.

Please let me know if you have any further questions. I can be reached at 415-346-0611.

Sincerely,

Tina Frank

Tina Frank

Sophie C. Wong

RE: Member, Alcoholic Beverage Control Appeals Board

January 27, 2006

Senate Rules Committee

Honorable Chairman Perata and Committees Members:

Thank you for the opportunity to appear before your Committee.

As a Member of the Alcoholic Beverage Control Appeals Board, I judge cases on appeals for Violations of Laws and Regulations cited by the Alcoholic Beverage Control Department. Having the background of serving 12 years on the Alhambra School Board, I place the highest priority on protecting minors from alcohol abuse in reviewing these cases. It is so important that the young people start their lives in the right direction because they not only have a profound effect on their families, they are our society's future. At the same time our Board must strive to enforce all laws and regulations equally and justly with every individual and to assure that everyone's civil rights are protected with cases appearing before our Board.

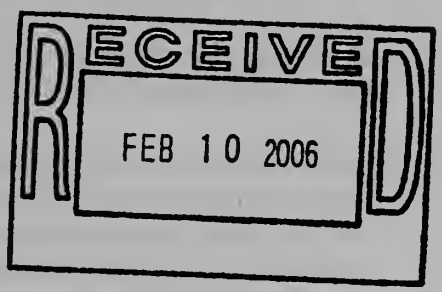
Thank you for your consideration.

Sophie C. Wong

SWstmt1.doc

Sophie C. Wong
565 Jade Tree Drive
Monterey Park, CA 91754
Tel: 626-282-7095
Fax: 626-282-5058

DATE: February 9, 2006



TO: SENATE RULES COMMITTEE
Chairman Don Perata
Vice-Chair Jim Battin
Roy Ashburn
Debra Bowen
Gilbert Cedillo

RE: Alcoholic Beverage Control Appeals Board Confirmation Hearing
February 15, 2006

1) What do you perceive to be the biggest issue confronting the Appeals Board in the near future? How will you go about addressing this issue?

Our job as members of the Appeals Board is to consider facts set forth in each case and continuously enforce adherence to the California Constitution and statutes. The most important issue confronting the Board is in reviewing the decisions of the Department of Alcoholic Beverage Control and guaranteeing that entity does not overstep its authority.

It is my mission to diligently study the facts, consider the arguments of all partics involved, intimately understand the laws that apply and seek counsel from the Board's legal staff before rending my decision in any case.

2) What experience and expertise do you bring that will be of value to the Appeals Board?

My life has been a testament to the belief that by investing in your community you're bettering the future.

It's that philosophy that led me to serve on the Alhambra Board of Education for 12 years. During my tenure I founded the Alhambra School District Educational Foundation, which brought corporate and business entities together to provide financial support to schools. The deep business roots I cultivated as Founding Member of Golden Security Bank, Principal of American Realty and President of Chinese for Christ Theological Seminary made that synergy possible in the name of the District's children.

Over the last 30 years, I've held various leadership roles in many public service and civic groups. Most recently I became Director of the Center for Water Education and Founding Chairman of the Southwest San Gabriel Chapter of the L.A. County Lincoln Club. In

recognition of my unwavering community service, I was honored to receive the "Outstanding Woman of the 24th Senate District" award from State Senator Gloria Romero.

I view my appointment to the Appeals Board as a continuance of what I've done all my life. It is my personal goal to do all I can to safeguard the welfare of my fellow Californians, protect their rights and empower them to pursue their respective dreams.

3) What goals or objectives for the department do you hope to see accomplished with these new resources?

These additional resources are invaluable to the continued education of consumers and businesses alike regarding the regulated distribution of alcoholic beverages. It is my hope that the funds be earmarked to increase compliance with existing laws and increase awareness of the potential dangers to the public welfare if regulations are not followed.

4) Do you have any ideas about how to strengthen enforcement laws to prevent binge drinking by both underage and of-age individuals?

As a mother, grandmother, former Board of Education member and citizen it greatly troubles me to hear of increasing instances of binge-drinking that could have a profound negative impact on promising lives. Regardless of my personal feelings, as an Appeals Board member, it is imperative that I remain impartial. I am charged with following the law, not making it.

5) What is your personal position on flavored malt beverages? Do you believe their current classification as beer should be changed to distilled spirits?

As an Appeals Board member it is my job to analyze the facts that come before me and to insure the law is followed. In an effort to carry out my duties fairly and without bias, I take no personal position on this question.

6) Do you have a position on the sale of gelatin-based alcoholic beverages, also known as "jello shots"?

I take no personal position on this question. Please refer to answer #5.

7) Does current law do an adequate job of discouraging minors from attempting to purchase alcohol? Is current law strict enough with respect to retailers who sell alcohol to minors?

The duties I am charged with as an Appeals Board member render my personal position on this question irrelevant. The effectiveness of current law and possible additions or revisions are better evaluated by legislators. The Appeals Board is not the place for an advocate of any particular issue. Therefore, I do not take a predetermined position. It is my job to remain neutral, study the facts of the case and determine whether or not the law was followed.

MANUEL ORTEGA
Commissioner
California State Lottery

Responses to Senate Rules Committee Confirmation Questions

1. **WHAT DO YOU HOPE TO ACCOMPLISH DURING YOUR TENURE AS A MEMBER OF THE LOTTERY COMMISSION? WHAT GOALS DO YOU HAVE FOR THE COMMISSION AND HOW WILL YOU ACCOMPLISH THEM?**

My principle goal is to increase lottery sales for the benefit of public education. I believe that as a member of the California Lottery Commission it is my responsibility to set policy and strategic direction that is in furtherance of the lottery for the benefit of public education. The California State Lottery (CSL) has had 20 years of successful sales. While the CSL is the fifth highest selling lottery in the United States, its per-capita sales ranks it 29th when compared to the performance of other lotteries. There is great potential for improving the sales performance of the CSL. I believe the Lottery Commission must make sure that our decisions positively impact the profits going to public education.

a. I have asked staff to do an inventory of these "best business practices" and to recommend which can be adopted for California and to include these recommendations into the "annual business plan" which will be presented to the Commission on June 29th 2005. One of the specifics which I have asked staff to explore is the expansion of the sales distribution network to include different trade styles which will make the lottery products more readily available to the public.

   As a member of the California Lottery Commission it is my responsibility to think and to motivate CSL staff to think strategically. One to two-year tactical annual plans are necessary to carry out the operational requirements of the lottery. Longer-term strategic plans are necessary to set the course for the future.

b. A key strategic consideration is the optimal prize payout to generate more funds for our beneficiaries. The Commission and staff are in the process of reviewing various prize payout structures for various lottery games to determine if it's possible to increase prizes and generate new sales. The current prize fund requirements are set in statute and would require legislative changes to increase prize fund levels. Current statutory restrictions should be thoroughly reviewed and recommended changes made to the Legislature.

c. I believe CSL staff is the Commission's most valuable asset for optimizing sales. I believe the Commission must set clear and achievable goals for staff and be supportive of their efforts, mindful that the lottery operates with honesty and integrity. Every effort should be made by the Commission and staff to tout the Lottery and place strong emphasis on the dollars that go to education each year.

JUN 2 2 2005

2. WHAT ARE THE BENEFITS TO CALIFORNIA IN JOINING A MULTI-STATE GAME? DO YOU HAVE ANY CONCERNS IN DOING SO?

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Also, if California Mega-Millions is as successful as we anticipate, consideration should be given to seeking legislation that would allow the CSL to offer bigger jackpots, which will, in turn, undoubtedly increase our player population.

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I'm not sure "Unpopularity" is the correct word to use within this context. CSL's annual sales this year were approximately $3.33 billion. Interest in on-line games may be dropping because SuperLOTTO Plus jackpots are not large enough to encourage players to buy tickets.

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Indian gaming is one of a multitude of gaming options that Californians have to choose from. At this time, we have not been able to measure any impact on the CSL.

8. IS THE LOTTERY ASSISTING PEOPLE WHO MIGHT BE PROBLEM GAMBLERS APPROPRIATELY OR SHOULD IT BE DOING MORE?

The CSL has been proactive in addressing problem gambling. The organization administers a comprehensive Problem Gambling Program, which promotes a 1-800 HELP line number on all instant game tickets, on-line tickets, and in a Problem Gambling Brochure that is available at approximately 18,500 retailer outlets statewide. Callers are connected directly to trained counselors 24 hours a day, seven days a week.

Periodically, the CSL uses its negotiated air time to run Public Service Announcements to create better awareness of the problem gambling issue and to encourage individuals or their loved ones get help for those who have problems.

The Lottery also contracts with the California Council on Problem Gambling to maintain the 1-800 HELP line, and to provide literature, upon request, on how to detect signs of gambling addiction and resources for treatment. In addition to this

contract, the Lottery is in partnership with the National Council on Problem Gambling, which coordinates an annual public awareness campaign that brings attention to this issue and resources for those impacted by problem gambling.

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As addressed in the response to Question 8 above, the CSL's Problem Gambling Brochure is on display at the Lottery's 18,500 retailers.

MANUEL ORTEGA
Commissioner
California State Lottery

Responses to Senate Rules Committee Confirmation Questions

1. **WHAT DO YOU HOPE TO ACCOMPLISH DURING YOUR TENURE AS A MEMBER OF THE LOTTERY COMMISSION? WHAT GOALS DO YOU HAVE FOR THE COMMISSION AND HOW WILL YOU ACCOMPLISH THEM?**

My principle goal is to increase lottery sales for the benefit of public education. I believe that as a member of the California Lottery Commission it is my responsibility to set policy and strategic direction that is in furtherance of the lottery for the benefit of public education. The California State Lottery (CSL) has had 20 years of successful sales. While the CSL is the fifth highest selling lottery in the United States, its per-capita sales ranks it 29th when compared to the performance of other lotteries. There is great potential for improving the sales performance of the CSL. I believe the Lottery Commission must make sure that our decisions positively impact the profits going to public education.

a. I have asked staff to do an inventory of these "best business practices" and to recommend which can be adopted for California and to include these recommendations into the "annual business plan" which will be presented to the Commission on June 29th 2005. One of the specifics which I have asked staff to explore is the expansion of the sales distribution network to include different trade styles which will make the lottery products more readily available to the public.

   As a member of the California Lottery Commission it is my responsibility to think and to motivate CSL staff to think strategically. One to two-year tactical annual plans are necessary to carry out the operational requirements of the lottery. Longer-term strategic plans are necessary to set the course for the future.

b. A key strategic consideration is the optimal prize payout to generate more funds for our beneficiaries. The Commission and staff are in the process of reviewing various prize payout structures for various lottery games to determine if it's possible to increase prizes and generate new sales. The current prize fund requirements are set in statute and would require legislative changes to increase prize fund levels. Current statutory restrictions should be thoroughly reviewed and recommended changes made to the Legislature.

c. I believe CSL staff is the Commission's most valuable asset for optimizing sales. I believe the Commission must set clear and achievable goals for staff and be supportive of their efforts, mindful that the lottery operates with honesty and integrity. Every effort should be made by the Commission and staff to tout the Lottery and place strong emphasis on the dollars that go to education each year.

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